

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JAMIE V VANATTA

Claimant

APPEAL NO. 15A-UI-11620-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INTERNATIONAL INC

Employer

OC: 09/20/15

Claimant: Respondent (1/R)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 9, 2015, reference 01, decision that allowed benefits to the claimant, provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged on September 22, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on November 3, 2015. Claimant Jamie Vanatta participated and presented additional testimony through Jessica Cowthorp. Heidi Pringle represented the employer. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview within the meaning of the law.

ISSUE:

Whether Ms. Vanatta separated from the temporary work assignment or from the employment with Manpower International, Inc., for a reason that disqualifies her for benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Manpower International Inc., is a temporary employment agency. Manpower has a branch office in Shenandoah. Jamie Vanatta began getting work through Manpower in fall of 2014. In November 2014, Ms. Vanatta began a full-time, temp-to-hire work assignment at Houghton Fluid Care in Shenandoah. The work at Houghton involved washing motor parts as part of a production process. At the time Ms. Vanatta accepted the assignment, Kevin Naico, a manager at Houghton, told Ms. Vanatta and another Manpower temporary worker, Jessica Cowthorp, that they could expect to be hired as direct employees of Houghton after three months in their temporary assignment. Ms. Vanatta initially worked overnight hours at Houghton. Houghton did not hire Ms. Vanatta or Ms. Cowthorp after three months in the assignment. Ms. Vanatta and Ms. Cowthorp continued in their respective assignments nonetheless. In February 2015, Houghton moved Ms. Vanatta to the first shift. Ms. Vanatta's hours on the first shift were 7:00 a.m. to 3:00 p.m., Monday through Friday. Ms. Vanatta also worked Saturdays as needed.

Ms. Cowthorp was also on the first shift. Shaun Weber was the supervisor on first shift. Mr. Weber reported to Mr. Naico. Ms. Vanatta continued in the assignment with the hope that she would eventually be hired by Houghton.

Ms. Vanatta last performed work in the Houghton assignment on September 22, 2015. On that morning, Mr. Weber notified Ms. Vanatta and Ms. Cowthorp that Houghton was not going to hire either of them. Ms. Vanatta was upset by the news. Ms. Vanatta was experiencing ongoing back issues and was looking forward to obtaining health insurance and paid time off through direct employment with Houghton. Ms. Vanatta's back issues had not prevented her from reporting for work. Ms. Vanatta was very upset when she learned that Houghton had decided not to extend an offer of direct employment. Ms. Vanatta was crying in the workplace. Ms. Vanatta asked Mr. Weber whether it would be okay for her to leave work so that her emotions did not interfere with production. Mr. Weber approved Ms. Vanatta's request to leave work early. The established work rules required that Ms. Vanatta direct such requests to Mr. Weber and did not require that she notify Mr. Naico or Manpower. Ms. Vanatta did not speak with Mr. Naico or with Manpower before she left the workplace that day shortly after 10:00 a.m. Ms. Vanatta said nothing in connection with her early departure that day to indicate that she would not be returning to the assignment the next day.

When Ms. Vanatta left the Houghton workplace, she went to her sister's home in Shenandoah. Ms. Cowthorp came to Ms. Vanatta's sister's home during Ms. Cowthorp's lunch break. While there, Ms. Cowthorp telephoned Manpower and spoke with Staffing Specialist Heidi Pringle. Ms. Vanatta got on the phone with Ms. Pringle and expressed her frustration regarding not being hired by Houghton. Ms. Vanatta had heard from a coworker that the coworker had been called in to replace Ms. Vanatta for the remainder of the week. Ms. Pringle indicated she had not heard anything about Ms. Vanatta being replaced. Ms. Vanatta spoke to Ms. Pringle later that day after Ms. Vanatta heard from a coworker that Mr. Naico had ended her assignment. Ms. Pringle confirmed that she had received an email message from Mr. Naico in which Mr. Naico indicated Houghton had ended the assignment based on Ms. Vanatta walking off the job. Ms. Vanatta told Ms. Pringle she had not walked off the job and, instead, had left only after obtaining permission from Mr. Weber. There had been no prior attendance issues.

On or about Friday, September 25, 2015, Ms. Vanatta went to the Manpower branch office in Shenandoah and spoke with Ms. Pringle. Ms. Vanatta wanted to make certain that she remained in good standing with Manpower so that she could obtain additional work through that office. Though Ms. Vanatta referenced her back issues, she did not indicate that her back issues prevented her from working. About a week later, Ms. Vanatta spoke to Manpower Branch Manager Harold Decuir, again to make certain that she remained in good standing with that office so that she could obtain a future assignment with that office. In connection with Ms. Vanatta's assertion that her back condition was made worse through her work for Manpower, Manpower sent Ms. Vanatta for medical evaluation.

When Ms. Vanatta began getting work through Manpower, Manpower had her go through an online application and skills assessment. As part of that online process, Manpower had Ms. Vanatta electronically sign an Availability Statement that obligated her to contact Manpower within three business days of the completion of an assignment to indicate her availability for a new assignment. Manpower did not provide Ms. Vanatta with a copy of the Availability Statement.

Ms. Vanatta established a claim for unemployment insurance benefits that was effective the week that started September 20, 2015. So far, \$1,731.00 in benefits have been disbursed to Ms. Vanatta for the six weeks between September 20, 2015 and October 31, 2015.

On October 8, 2015, a Workforce Development claims deputy held a fact-finding interview to address Ms. Vanatta's separation from Manpower. Ms. Vanatta participated. Ms. Vanatta did not engage in any fraud or intentional misrepresentation in connection with the fact-finding interview. An Equifax representative represented Manpower at the fact-finding interview and provided an oral statement to the claims deputy. The Equifax representative had also provided for the fact-finding interview an email from Ms. Pringle in which Ms. Pringle had set forth the particulars of the separation from Manpower's perspective.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge will first address Ms. Vanatta's separation from the temporary work assignment.

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The weight of the evidence in the record fails to establish that Ms. Vanatta voluntarily quit the Houghton assignment. The weight of the evidence establishes instead that Mr. Naico elected to end the assignment based on Ms. Vanatta's emotional response to learning she would not be hired and her associated early departure on September 22, 2015. Though Ms. Vanatta was upset by the news she received on the morning of September 22, 2015, she had no intention to quit the assignment. Ms. Vanatta obtained permission from her immediate supervisor, Mr. Weber, to leave work early on September 22, 2015, so that her emotional state would not disrupt the workplace. Ms. Vanatta completed the assignment when Mr. Naico elected to discharge her from the assignment. Ms. Vanatta's single early departure from work, with the permission of her supervisor, neither constituted a voluntary quit nor misconduct in connection with the assignment.

The administrative law judge will next address Ms. Vanatta's separation from the employer, Manpower International, Inc.

Iowa Code § 96.5(1)j provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department, but the individual shall not be disqualified if the department finds that:

j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees

who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The evidence in the record establishes that the employer did not comply with the statutory notice requirements. The employer's requirement that Ms. Vanatta electronically sign an electronic Availability Statement did not satisfy that statutory requirement that the employer provide a clear and concise explanation of the notice requirement and the consequences of failure to notify, that the document be separate from any contract of employment, or that a copy of the signed document be provided to Ms. Vanatta. The electronic "document" was part of the online application and online "contract." The online "document" initially stated a 48-hour contact requirement and then stated different requirements applicable to claimants in Iowa and two other states. The employer did not provide Ms. Vanatta with a copy of the "document" the employer asserts she signed. Because the employer did not comply with the requirements of Iowa Code section 96.5(1)(j), the employer cannot rely upon that statute to argue relief from liability for benefits. Because the employer did not comply with the statute, Ms. Vanatta fulfilled her obligation to Manpower when she completed the assignment upon the client business' termination of the assignment. In any event, the evidence indicates that Ms. Vanatta was in contact with the employer within three business days of the end of the assignment for the express purpose of ensuring her good standing with Manpower for the purpose of obtaining an additional assignment if and when they became available.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Vanatta's September 22, 2015 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Ms. Vanatta is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Vanatta.

Because the employer raised the issue of whether Ms. Vanatta has been able to work and available for work since she established her claim for benefits, this matter will be remanded to the Benefits Bureau so that those issues may be considered and adjudicated after proper notice to the parties.

DECISION:

The October 9, 2015, reference 01, decision is affirmed. The claimant was discharged from the temporary work assignment on September 22, 2015 for no disqualifying reason. The claimant's September 22, 2015 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits, paid to the claimant.

This matter is remanded to the Benefits Bureau so that the able and available issues may be considered and adjudicated after proper notice to the parties.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs