

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL SHEPHARD
Claimant

PREMIER SERVICES INC
Employer

APPEAL 20A-UI-10953-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (1/R)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Daniel Shephard (claimant) appealed a representative's August 31, 2020, decision (reference 05) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with the Premier Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 27, 2020, before Administrative Law Judge Julie Elder. The claimant participated personally and through his wife Jamie Shephard. The employer participated by Eunice Pineda, and Erica Nuno, from Human Resources.

A decision was issued on November 16, 2020. That decision was vacated on December 1, 2020, due to a jurisdictional issue.

ISSUE:

The issues include whether the claimant was separated from employment for any disqualifying reason and whether the claimant was able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary agency. The claimant was assigned to work at Royal Canin from January 13, 2020, through April 2, 2020, as a full-time production worker. He worked the 5:30 p.m. to 6:00 a.m. shift, five days per week.

On April 7, 2020, the claimant's wife sent the employer a text message stating the claimant would not be returning to work due to the coronavirus scare. There was no outbreak of Covid-19 at work. The claimant heard that his boss had Covid-19 but this was untrue. The claimant thought the employer should have offered him time off or offered him a test. The claimant did not ask for another assignment.

The claimant was tested for Covid-19 and found that he had an upper respiratory infection. The claimant did not seek reassignment. Continued work was available with the employer had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.25(21) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by words and actions. When employees quit work because of dissatisfaction with the work environment, their leaving is without good cause attributable to the employer. The claimant left work because he thought he overheard someone say his boss had Covid-19 at his assignment. Based on this, he did not like his work environment. The statement was untrue and he did not seek reassignment from the employer. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The next issue is whether the claimant is able and available for work.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition or because they want to quarantine, they are considered to be unavailable for work. The claimant decided to leave work

and self-quarantine. He is not able and available for work while he quarantines. The claimant is disqualified from receiving unemployment insurance benefits as of April 7, 2020.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

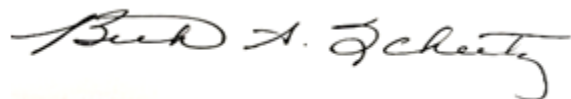
DECISION:

The representative's August 31, 2020, decision (reference 05) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible. The claimant is not able and available for work. He is disqualified from receiving unemployment insurance benefits as of April 7, 2020.

Please notify the department immediately if the conditions change regarding your ability to work and you believe the disqualification can be removed.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Beth A. Scheetz
Administrative Law Judge

December 14, 2020
Decision Dated and Mailed

bas/mh