

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LEE E KELLEY
Claimant

APPEAL 17A-UI-00184-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES–BURLINGTON INC TE
Employer

**OC: 10/16/16
Claimant: Respondent (4)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the December 30, 2016 (reference 04) unemployment insurance decision that found claimant was eligible to receive benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 27, 2017. The claimant, Lee E. Kelley, did not participate. The employer, Temp Associates – Burlington Inc. TE, participated through witness Sherry Savely. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer is a temporary employment firm. Claimant was last assigned to work at Fairfield Castings as a machine operator. Claimant was working full-time. Claimant was informed this job assignment would have a two week layoff from November 27, 2016 to December 10, 2016. Claimant was instructed to return to work on Monday, December 12, 2016 after the two-week layoff. Claimant was laid off from November 27, 2016 to December 10, 2016 for lack of work.

On Monday, December 12, 2016 claimant did not return to work due to having sick children at home. He did notify the employer. On Tuesday, December 13, 2016 claimant contacted the employer and stated that he was unable to continue working his job assignment at Fairfield Castings because his babysitter for his children quit and he had to stay home with his children.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$894.00 for a two-week period ending December 10, 2016. The administrative record also establishes that the employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Admin. Code r. 871-24.1 provides:

Definitions. Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(113) *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.

Claimant was laid off due to lack of work from November 27, 2016 through December 10, 2016. Therefore, this two-week temporary separation was attributable to a lack of work by the employer. Benefits are allowed for that two-week time period. Because benefits are allowed for that two-week time period the issues of overpayment and chargeability for that time period are moot. However, claimant voluntarily quit after the temporary layoff.

Iowa Code §96.5(1) 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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Iowa Admin. Code r. 871-24.25(17) 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 § 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 § 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:

(17) The claimant left because of lack of child care.

After the two-week layoff claimant quit his employment due to lack of child care. Claimant's leaving the employment was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied effective December 11, 2016.

DECISION:

The December 30, 2016 (reference 04) unemployment insurance decision is modified in favor of appellant. Claimant was laid off and eligible for unemployment insurance benefits for the two-week period ending December 10, 2016. Claimant voluntarily quit employment without good cause attributable to the employer after his two-week layoff. Unemployment insurance benefits shall be withheld in regards to this employer after benefit week ending December 10, 2016 and until such time as claimant is deemed eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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