

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NEAL A SMITH**  
Claimant

**APPEAL 18A-UI-11836-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QPS EMPLOYMENT GROUP INC**  
Employer

**OC: 09/16/18**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(1)(j) – VQ – Temporary employment firm  
Iowa Admin r. 871-24.26(15) – VQ – Employee of temporary employment firm

**STATEMENT OF THE CASE:**

Neal Smith, Claimant, filed an appeal from the December 6, 2018 (reference 04) unemployment insurance decision that denied benefits because he voluntarily quit work with QPS Employment Group, Inc. and his quitting was not caused by the employer. The parties were properly notified of the hearing. A telephone hearing was held on January 4, 2019 at 1:00 p.m. Claimant participated. Employer participated through Francis Thiesen, Unemployment Specialist; and Kelly Lochray, Placement Coordinator II. Employer's Exhibits 1 and 2 were admitted.

**ISSUES:**

Whether claimant's separation was a voluntary quit without good cause attributable to the employer.

Whether claimant made a timely request for another job assignment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began his employment with QPS Employment Group, Inc. ("employer"), a temporary employment firm, on September 26, 2017. (Thiesen Testimony) Claimant's last assignment through employer was as a full-time production worker at Mary Ann's Specialty Foods, Inc. (Thiesen Testimony) Claimant began this assignment on October 11, 2018. (Thiesen Testimony) On October 22, 2018, claimant quit his assignment at Mary Ann's due to long work hours, of which he was aware when he accepted the assignment. (Claimant Testimony)

Employer alleges that, after claimant quit his assignment on October 22, 2018, he first contacted employer on October 31, 2018 to request a new assignment. (Lochray Testimony) Employer testified that claimant had no contact with employer between October 22, 2018 and October 31, 2018. (Lochray Testimony) Later in the hearing, employer testified claimant called employer on October 22, 2018, but its system does not reflect to whom claimant spoke or the content of the conversation. (Lochray Testimony) Employer also testified that claimant visited

the office on October 23, 2018, informed employer that he quit the assignment but did not request another assignment. (Lochray Testimony) Claimant alleges that he requested a new assignment when he visited the office on October 23, 2018. (Claimant Testimony)

Claimant was advised in writing of his duty to notify employer within three days of completion of an assignment and to request a new assignment. (Exhibit 2) Claimant received a copy of the three day notice requirement. (Exhibit 2)

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant, within three days of completion of his assignment, notified employer and sought reassignment. Benefits are allowed provided claimant is otherwise eligible.

Iowa Code section 96.5(1)(j) provides:

An individual shall be disqualified for benefits

1. 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. (1) 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.

(2) 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.

Iowa Admin. Code r. 871-24.26(15) 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:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

"The employer has the burden of proving that a claimant's departure from employment was voluntary." *Irving v. Employment Appeal Board*, 883, NW 2d 179, 210 (Iowa 2016). Then, claimant has the burden of proving that a voluntary quit was for good cause attributable to the employer. *Id.* at § 96.6(2).

It is my duty, as the administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the claimant's version of events to be more credible than the employer's recollection of those events, because the employer provided inconsistent testimony about claimant's contacts with the employer after claimant's last assignment ended.

Claimant left his assignment at Mary Ann's on October 22, 2018. Claimant notified employer of his assignment ending and his desire for a new assignment in person on October 23, 2018. Employer has not met its burden of proving claimant voluntarily quit his employment by failing to request a new job assignment within three days of his assignment ending. Benefits are allowed.

**DECISION:**

The December 6, 2018 (reference 04) unemployment insurance decision is reversed. Benefits are allowed provided claimant is otherwise eligible.

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Adrienne C. Williamson  
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Decision Dated and Mailed

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