

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AVERY V WINGARD
Claimant

APPEAL NO. 15A-UI-12204-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 05/24/15
Claimant: Appellant (1)

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Avery Wingard filed a timely appeal from the October 29, 2015, reference 04, decision that disqualified him for benefits and that relieved the employer of liability for benefits; based on an Agency conclusion that he had voluntarily quit on August 14, 2015 without good cause attributable to the employer. After due notice was issued, a hearing was held on November 18, 2015. Mr. Wingard participated. Robin McCroskey represented the employer.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kelly Services is a temporary employment agency. On July 27, 2015, Kelly Services placed Avery Wingard in a full-time, temporary work assignment in Des Moines. At the time Mr. Wingard accepted the assignment, the client business anticipated the assignment would end on August 21, 2015. At the time Mr. Wingard accepted the assignment, he advised Kelly Services that he planned to relocate to Ames. Mr. Wingard voluntarily quit the assignment effective August 14, 2015 so that he could relocate to Ames in anticipation of beginning his studies at Iowa State University. Mr. Wingard did indeed relocate to Ames at that time. At the time Mr. Wingard quit the assignment, Kelly Services and the client business continued to have work for Mr. Wingard in the assignment.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.25(2) and (26) provide:

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:

(2) The claimant moved to a different locality.

(26) The claimant left to go to school.

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 evidence in the record establishes that Mr. Wingard voluntarily quit the employment on August 14, 2015 to relocate to Ames and attend Iowa State University. The quit was without good cause attributable to the employer. Accordingly, Mr. Wingard is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Wingard.

DECISION:

The October 29, 2015, reference 04, decision is affirmed. The claimant voluntarily quit the employment on August 14, 2015 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/can