IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

RAINA M ANDERUNG Claimant **RANDSTAD HR SOLUTIONS OF DELAWAR** Employer	**APPEAL 21A-UI-14695-ML-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/28/21** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 18, 2021, (reference 02) unemployment insurance decision that held Claimant is not eligible to receive unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 12, 2021. Claimant, Raina Anderung, participated personally. Employer participated through Sheena Smith.

Employer's Exhibit A was offered and accepted into the evidentiary record. Claimant's Exhibit 1 was offered and accepted into the evidentiary record. The administrative law judge took official notice of the administrative record.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Did the claimant voluntarily quit by not reporting for an additional work assignment within three business days of the end of the last assignment?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The employer is a temporary employment service. The claimant was first hired as a part-time cosmetics sales specialist for Randstad Human Resources Solutions on or about December 5, 2017. Since approximately January, 2018, Claimant has been assigned to work as a Promotional Artist for NARS Cosmetics. Claimant considers herself a longtime employee of NARS. According to claimant, "NARS is the company I work for, Randstad is the company that does the payroll."

According to the employer, claimant's last assignment with NARS began on February 12, 2020, and ended on February 27, 2021. Claimant then started a "new" assignment on May 12, 2021. She recently took on an additional assignment, through Ranstad, with Juice Beauty. Her current assignments are ongoing.

The employer submitted sections of the employment contract claimant signed as part of the onboarding process on May 10, 2021. According to claimant, she has participated in the onboarding process twice: once when she began her employment in December, 2017, and again when she returned to work once pandemic restrictions were lifted in May, 2021. The employer did not submit claimant's December 5, 2017, contract. The May 10, 2021, contract provides Claimant is to contact the employer within three working days following the completion of an assignment to notify the company of her availability for other assignments. The reporting policy is not separate from the employment contract.

The reporting requirements at Ranstad appear to be fairly relaxed. While employees are technically required to contact the employer within three working days following the completion of an assignment, a considerable amount of flexibility is afforded to employees as a result of the employer's hands off/automatic approach. Randstad does not have an open line of communication with the employer-client. The onus for communicating the completion of an assignment, or a separation from employment with the employer-client, falls on the individual employee. The employer implements an automated termination schedule. If an employee has not logged any hours or reported for additional assignments for 30 to 60 days, Randstad assumes the employment relationship between the employee and the employer-client has ended and it will terminate the employment contract. This grace period is due, in part, to the fluctuating demand for contingent workers.

However, it does not appear as though this 30 to 60-day automatic termination feature was utilized in this instance. The employer asserts February 27, 2021, as claimant's date of separation. This would mean claimant reported hours in December, 2020 or January, 2021. However, Claimant testified she did not work for the employer-client between March, 2020 and May, 2021.

On March 16, 2020, an account executive with Nars sent an e-mail to claimant, notifying her that as of March 16, 2020, NARS Cosmetics was suspending in-store visits for the "Promotional Artistry Team" for two weeks. The e-mail provides, "Please understand this does not terminate your positions as freelance artists as your role is crucial to the growth of the brand." The e-mail further provides, "Please reach out to your direct Account Executive or Randstad directly if you have further questions." Shortly thereafter, Ulta and Sephora, two locations claimant routinely worked in, closed due to the COVID-19 pandemic.

Claimant's next assignment would not come until May, 2021.

Claimant was unable to log in to her Randstad online account when she attempted to report her hours in May, 2021. Claimant reported the issue to her account executive and completed the on-boarding process for the first time since December 5, 2017. According to claimant, the on-boarding process was substantially different this time around. Defendant asserts that while the onboarding process may have changed, the documents claimant signed did not. Although the December 5, 2017, contract was not entered into evidence, the employer asserts it contained the same 3-day reporting policy as the May 10, 2021, contract. The employer asserts that a copy of the December 5, 2017, contract was sent to claimant's e-mail address.

In contrast, Claimant asserts she was wholly unaware of the need to report periods of unemployment to Ranstad until she participated in the on-boarding process in May, 2021. Claimant testified such a policy was not discussed during the first on-boarding process in December, 2017. Claimant further testified she was not provided with a copy of her

employment contract, or any such policy, in December, 2017. Lastly, Claimant asserts she was not aware that she could seek additional job opportunities through Randstad between March, 2020, and May 15, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the separation was with good cause attributable to the employer. Benefits are allowed.

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. (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.
>
> (3) For the purposes of this paragraph:
>
> (a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.
>
> (b) "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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "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". *Id*. (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

While the employer submitted a copy of claimant's May 10, 2021, contract, it did not submit a copy of the December 5, 2017, contract. There is no evidence that the May 10, 2021, contract was substantially similar to the contract claimant signed on December 5, 2017. Moreover, even if the two contracts were substantially similar, the 3-day reporting policy is not separate from the contract of employment as required under Iowa Code section 96.5(1)j.

Since employer provided no evidence that it presented claimant with a written copy of the reporting policy, claimant's recollection that she did not receive notice of the reporting policy in 2017 is credible. As such, I find the claimant complied with Iowa Code section 96.5(1)j and she did not voluntarily quit without good cause attributable to the employer. The separation is not disqualifying. Benefits are allowed.

DECISION:

The June 18, 2021, (reference 02) unemployment insurance decision is reversed. The claimant's separation from employment was not disqualifying. Benefits are allowed, provided she is otherwise eligible.

Michael J. Lunn
Administrative Law Judge
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August 27, 2021
Decision Dated and Mailed

mjl/kmj