

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNY S MITCHELL
Claimant

APPEAL NO. 11A-UI-10803-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AVENTURE STAFFING & PROFESSIONAL
Employer

OC: 08/29/10
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 10, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 8, 2011. Claimant Jenny Mitchell participated. Kayla Neuhaufen, Human Resources Assistant, represented the employer. Exhibits One, Two and Three were received into evidence.

ISSUE:

Whether Ms. Mitchell separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Jenny Mitchell began her employment with Aventure Staffing on May 31, 2011 and was placed in a full-time temp-to-hire work assignment at Veridian Limited in Spencer on June 6, 2011. The assignment turned out not to be a good fit. The Veridian Limited assignment involved sewing. The compensation paid to Ms. Mitchell and others who performed the sewing work at Veridian Limited was based in part on incentive or bonus pay. Ms. Mitchell did not like that the sewing errors she made impacted not only on the compensation she would receive, but also on the compensation her coworkers would receive. At one point, Ms. Mitchell received a verbal reprimand for the quality of her work. Ms. Mitchell felt pressured and at time suffered from a stress headache while in the assignment.

Ms. Mitchell last performed work in the Veridian Limited assignment on July 5, 2011. On July 6, Ms. Mitchell went to the Aventure Staffing office and spoke with Employee Service Representative Danielle Wigen. Ms. Mitchell told Ms. Wigen that she could not handle the job at Veridian Limited and asked to be placed in a different assignment. Ms. Wigen told Ms. Mitchell that she would try to find her something else. The employer did not have anything else for Ms. Mitchell at that time. Ms. Mitchell and Ms. Wigen did not discuss the impact that leaving the assignment at Veridian Limited would have on Ms. Mitchell's employment status or on her unemployment insurance benefit eligibility. On July 8, Ms. Mitchell contacted Aventure Staffing to indicate she was available for a new assignment.

Ms. Mitchell established an additional claim for unemployment insurance benefits that was effective July 3, 2011.

At the start of the employment with Aventure Staffing, prior to being placed in the assignment at Veridian Limited, the employer provided Ms. Mitchell with an employee handbook. Page 5 of the handbook contained a provision regarding what the employer would deem a voluntary quit. Under that provision, failure to complete an assignment was deemed a voluntary quit.

REASONING AND CONCLUSIONS OF LAW:

Iowa Workforce Development rule 871 IAC 24.1(113) provides as follows:

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.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 indicates first that Ms. Mitchell did not complete the full-time, temp-to-hire assignment. The evidence indicates that Ms. Mitchell voluntarily separated from the full-time assignment on July 6, 2011. Neither Veridian Limited nor Aventure Staffing in any way initiated the separation from the assignment. The prior decision that deemed the separation a layoff due to a lack of work was in error. The employer continued to have the same work available to Ms. Mitchell in the Veridian Limited assignment. Ms. Mitchell separated from the assignment because she did not like the work environment, including the way the incentive pay was structured. Ms. Mitchell conveyed her intention to separate from the assignment to Aventure Staffing on July 6 and then did not return to the assignment. Ms. Mitchell was on warning, by means of the employee handbook, that failure to complete the assignment would be deemed a voluntary quit. The evidence does in fact establish a voluntary quit. Ms. Mitchell knew at the

time she voluntarily quit the assignment that Aventure Staffing did not have any other work for her. Thus, the separation from the work assignment was also a separation from Aventure Staffing.

Iowa Code section 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.

When a worker voluntarily quits employment due to dissatisfaction with the work environment, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21).

The weight of the evidence establishes that Ms. Mitchell voluntarily quit the employment for personal reasons and not for good cause attributable to the employer. Ms. Mitchell is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Mitchell.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's August 10, 2011, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css