

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NIKKO S SCOTT
Claimant

APPEAL NO. 17A-UI-03897-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WORKSOURCE INC
Employer

OC: 03/12/17
Claimant: Appellant (5/R)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

STATEMENT OF THE CASE:

Nikko Scott filed a timely appeal from the April 5, 2017, reference 03, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Scott had voluntarily quit the employment on March 13, 2017 by failing to notify the temporary employment firm within three working days of the completion of his last assignment after having been told in writing of his responsibility to notify the employer. After due notice was issued, a hearing was held on May 3, 2017. Mr. Scott participated. Belsiha Kantarevic represented the employer. Exhibits A and B were received into evidence.

ISSUE:

Whether Mr. Scott separated from an assignment or from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Worksource, Inc. is a temporary employment agency located in West Des Moines. Nikko Scott applied for work through Worksource in June 2015. At that time, the employer had Mr. Scott participate in an orientation. As part of the orientation, the employer provided Mr. Scott with an employee handbook and had him sign a stand-alone policy regarding his obligation to contact with the employer within three days of completing an assignment to receive a new assignment or be deemed to have voluntarily quit and risk being disqualified for unemployment insurance benefits. The employer provided Mr. Scott with a copy of the policy statement he signed. Mr. Scott does not recall signing the policy or receiving the policy or the handbook.

In September 2016, Mr. Scott commenced a full-time, temp-to-hire work assignment at Cross Dillon Tire. Mr. Scott continued in the assignment until February 22, 2017, when he voluntarily quit the assignment. Mr. Scott walked off that job that day in response to his supervisor's physically aggressive behavior. During Mr. Scott's shift that day, the supervisor came into Mr. Scott's work space and began kicking objects to show his displeasure with Mr. Scott.

After Mr. Scott quit the Cross Dillon Tire assignment on **February 22, 2017**, he did not make any contact with Worksource to report that he had left the assignment. On March 2, 2017, Mr. Scott called Worksource to inquire about his paycheck. Mr. Scott spoke with Belsiha Kantarevic, Administrative Assistant. During the call, Ms. Kantarevic asked Mr. Scott what had happened at Cross Dillon Tire and why Mr. Scott had not communicated with Worksource

regarding his separation from the assignment. During the call, Mr. Scott explained that the supervisor had been disrespectful and mentioned the supervisor kicking a couple boxes. Ms. Kantarevic told Mr. Scott that she wished he had communicated with Worksource. Before the call ended, Ms. Kantarevic asked Mr. Scott whether he was interested in additional work and Mr. Scott said he was interested in additional work.

On March 5, 2017, the employer offered Mr. Scott a one-day assignment at PDS. Mr. Scott accepted the assignment and completed the assignment on **March 6, 2017**. Mr. Scott did not contact Worksource after he completed the assignment.

On March 23, 2017, Jessica Swift, Accounting Manager with Worksource, telephoned Mr. Scott to offer him another assignment at PDS. The assignment was to start the next day and last for two weeks. Mr. Scott declined 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 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.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 213 (Iowa 2005).

The weight of the evidence establishes that Mr. Scott did not complete the assignment at Cross Dillon. Instead, Mr. Scott voluntarily quit the assignment effective February 22, 2017. The supervisor's physically aggressive behavior was an implied threat of aggression and constituted an intolerable and detrimental and detrimental working condition that would have prompted a reasonable person to leave the employment. Mr. Scott had good cause for leaving the assignment at Cross Dillon Tire. Because Mr. Scott quit the assignment before it was completed, Iowa Code section 96.5(1)(j) does not apply. The February 22, 2017 voluntary quit did not disqualify Mr. Scott for unemployment insurance benefits. Instead, Mr. Scott remained eligible for unemployment insurance benefits, provided he met all other eligibility requirements. The employer's account would not be relieved of liability for benefits in connection with the February 22, 2017 separation.

If the administrative law judge had concluded that Iowa Code section 96.5(1)(j) had applied to the February 22, 2017 separation, that separation would have been without good cause attributable to the based on Mr. Scott's failure to contact the employer within three working days of his last day in the assignment to request placement in a new assignment.

The March 6, 2017 one-day assignment represented a separate and distinct period of employment that followed the February 22, 2017 voluntary quit.

The employer's end-of-assignment policy statement complied with the requirements set forth at Iowa Code section 96.5(1)(j). Mr. Scott had signed the policy statement and received the policy. Mr. Scott completed the one day assignment on March 6, 2017. Because Mr. Scott completed the assignment, and because the employer's end-of-assignment notification requirement complied with the requirements of Iowa Code section 96.5(1)(j), Mr. Scott was at that point obligated to contact the employer within in three working days to request a new assignment. Mr. Scott did not do that. Accordingly, the March 6, 2017, separation was without good cause attributable to the employer. Effective March 6, 2017, Mr. Scott is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Scott must meet all other eligibility requirements. Based on the March 6, 2017 separation, the employer's account will be relieved of liability for benefits.

The March 23, 2017 purported offer of employment and purported refusal of employment concerns a legal issue, refusal of suitable work, that was not included in the issues set for the hearing on May 3, 2017. Accordingly, the administrative law judge will remand this matter to the Benefits Bureau for adjudication of the March 23, 2017 work refusal issue.

DECISION:

The April 5, 2017, reference 03, decision is modified as follows. There were two separations to adjudicate, neither of which occurred on March 13, 2017.

The first separation was a voluntary quit on February 22, 2017 for good cause attributable to the employer based on intolerable and detrimental working conditions. That separation did not disqualify the claimant for benefits or relieve the employer's account of liability for benefits.

The second separation occurred on March 6, 2017, when the claimant completed a temporary work assignment and did not contact the employer within three working days to request a new assignment. The March 6, 2017 separation was a voluntary quit without good cause attributable to the employer. The March 6, 2017 separation disqualified the claimant for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirement. Based on the March 6, 2017 voluntary quit without good cause, the employer's account is relieved of liability for benefits in connection with the claim.

This matter is remanded to the Benefits Bureau for adjudication of the issues related to the March 23, 2017 alleged offer of suitable work and alleged refusal.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs