

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NATHANIEL J FOREST
Claimant

STAFFMARK INVESTMENT LLC
Employer

APPEAL 23A-UI-10440-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/18/23
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Nathaniel J. Forest, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) October 31, 2023 (reference 05) unemployment insurance (UI) decision. IWD denied Mr. Forest REGULAR (state) UI benefits because IWD concluded he voluntarily quit on September 25, 2023 to accept another job but he did not start another job and the employer did not cause his quitting. On November 7, 2023 the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Mr. Forest and the employer for a telephone hearing scheduled for November 27, 2023.

On Wednesday, November 22, 2023, Mr. Forest, through his attorney Lorraine Gaynor, requested that the hearing be rescheduled to have more time to prepare, and to subpoena emails from Mr. Forest's email address to the email accounts of two employees of the employer. The DIAL, UI Appeals Bureau was closed Wednesday, November 22, 2023 through Friday, November 24, 2023. The administrative law judge saw Mr. Forest's request on Monday, November 27, 2023.

The administrative law judge held a pre-hearing conference on November 27, 2023. Mr. Forest participated in the conference personally. Ms. Gaynor represented Mr. Forest. The employer participated in the conference through Kylee Adesso, senior recruiter. The administrative law judge granted Mr. Forest's request to reschedule the hearing. Mr. Forest modified his subpoena request to emails from his email address on, or after, September 22, 2023 to the email accounts of two employees of the employer. The administrative law judge granted Mr. Forest' modified subpoena request.

On November 30, 2023 the DIAL, UI Appeals Bureau mailed a notice of hearing to Mr. Forest, Ms. Gaynor, and the employer for a telephone hearing scheduled for December 12, 2023. Mr. Forest, Ms. Gaynor, and Ms. Adesso called in to participate in the December 12 hearing. The DIAL, UI Appeals Bureau conference call system was not functioning properly, so the administrative law judge rescheduled the hearing. Mr. Forest, Ms. Gaynor, and Ms. Adesso all agreed to December 13, 2023 at 1:00 p.m. as the new hearing date and time.

¹ Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

On December 13, 2023 the DIAL, UI Appeals Bureau mailed a notice of hearing to Mr. Forest, Ms. Gaynor, and the employer for a telephone hearing scheduled for December 13, 2023. The administrative law judge held a telephone hearing on December 13, 2023. Mr. Forest participated in the hearing personally. Ms. Gaynor represented Mr. Forest. The employer participated in the conference through Ms. Adesso, senior recruiter. The administrative law judge admitted Claimant's Exhibit A as evidence.

ISSUE:

Did Mr. Forest voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Forest began working for the employer in July 2023. He worked as a full-time quality lab technician assigned to work at Treehouse Foods (Treehouse). His employment ended on September 21, 2023.

Sometime during the week of September 11-15, Treehouse informed Mr. Forest that his assignment with Treehouse would end on Monday, October 2. Mr. Forest began looking for other employment. Mr. Forest told his supervisor at Treehouse that he would end his assignment with Treehouse on Thursday, September 21. On Tuesday, September 19, Mr. Forest informed the employer that he was ending his assignment with Treehouse on Thursday, September 21 because he would be starting a new job on Tuesday, September 26.

The next day, Wednesday, September 20, the employer thanked Mr. Forest for the information and wished him well. Mr. Forest worked at Treehouse that day. Later that day, Mr. Forest informed the employer that he was waiting to hear back from his potential new employer, he would like to take back his September 21 end date with Treehouse if the potential new employer did not hire him, and he would update the employer later that day or the next day. The employer thanked Mr. Forest for the information and asked him to keep the employer updated. Mr. Forest also told his supervisor at Treehouse that he wanted to continue working at Treehouse until he heard back from the potential new employer. The Treehouse supervisor agreed.

Mr. Forest worked at Treehouse on Thursday, September 21 and he called in for Friday, September 22. Late afternoon Thursday, September 21, Mr. Forest's two-up manager at Treehouse informed the employer that Treehouse ended Mr. Forest's assignment with Treehouse effective that day because Mr. Forest initially said he was leaving, then asked to continue working and Mr. Forest's Treehouse supervisor agreed, then Mr. Forest called in. Mr. Forest was not aware of this email at the time.

On Saturday, September 23, Mr. Forest informed the employer that he had talked with his Treehouse supervisor, and he planned to work at Treehouse the following week. The employer thanked Mr. Forest for the update.

On Monday, September 25, Mr. Forest arrived at work at Treehouse. The Treehouse supervisor told Mr. Forest that his assignment was over as of Friday, September 22. Mr. Forest left. Mr. Forest was not aware of any policy from the employer about contacting the employer to ask for new work after an assignment ended. Ms. Adesso assumed that the employer has a policy requiring employees to ask for a new assignment within three days of the end of their

assignment, but she was unsure about the policy. The employer did not submit any such policy as evidence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes the September 21, 2023 ending of Mr. Forest's employment does not disqualify him from receiving UI benefits.

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.

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 lettered paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force 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(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 purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The language of the statute allows benefits for a claimant who notifies the temporary employment firm of completion of an assignment and who seeks reassignment.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer.² A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention.³ "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular.⁴

In this case, Mr. Forest did not notify the employer of his availability or request another assignment within three days of the end of his assignment at Treehouse. But the employer did not tell Mr. Forest about this requirement in writing. Treehouse ended Mr. Forest's assignment with Treehouse. But since the employer did not tell Mr. Forest, in writing, about the notification requirement, the ending of Mr. Treehouse's employment is not disqualifying. Mr. Forest is eligible for UI benefits.

² Iowa Code § 96.6(2).

³ *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

⁴ *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

DECISION:

The October 31, 2023 (reference 05) UI decision is REVERSED. The September 21, 2023 ending of Mr. Forest's employment does not disqualify him from receiving UI benefits. Mr. Forest is eligible for UI benefits, as long as no other decision denies him UI benefits.



Daniel Zeno
Administrative Law Judge

December 18, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.