

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SCOTT A RALFS**

Claimant

**APPEAL NO. 09A-UI-06825-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC  
SEDONA STAFFING**  
Employer

**Original Claim: 03/29/09  
Claimant: Respondent (2-R)**

Iowa Code section 96.5(1) – Voluntary Quit  
Iowa Code section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 24, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 29, 2009. Claimant Scott Ralfs participated. Colleen McGuinty, Unemployment Benefits Administrator, represented the employer and presented additional testimony through Cheryl Theofilis, Sales and Service Representative.

**ISSUES:**

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

Whether the claimant has been able to work and available for work since he established his claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a staffing agency. The claimant established his employment relationship with the staffing agency on September 2, 2008, when he commenced working in a full-time, temp-to-hire work assignment. The claimant last performed work in the assignment on September 26, 2008 and did not complete the assignment. The claimant called in sick on September 29 and 30. The claimant then ceased appearing for the assignment. On October 3, the client business contacted the staffing agency to ask what had happened to the claimant because he had ceased appearing for the assignment. The staffing agency attempted contact the claimant, left a message, but did not hear back from the claimant. On October 4, the claimant notified the client business that he was quitting. The staffing agency and the client business continued to have work available for the claimant in the work assignment.

The claimant next made contact with the staffing agency on November 4, 2008, when he inquired about returning to the work assignment. At that point, the assignment had ended.

The claimant had left the assignment due to alcohol abuse issues and his desire to seek inpatient alcohol treatment. The claimant did not notify the staffing agency or client business that he was

leaving the assignment for this purpose. A medical professional had not recommended that the claimant leave the assignment.

After the claimant left the assignment, he entered an inpatient alcohol treatment program. The claimant successfully completed the alcohol inpatient treatment program and transitioned to a halfway house operated by the treatment program. The claimant's allotted time in the halfway house is about to end, but the claimant intends to request an extension of his stay. While in a halfway house, halfway house staff will provide transportation to and from employment. The claimant lacks a driver's license.

When the claimant contacted the staffing agency on November 4, the staffing agency offered the claimant an assignment that would require possession of a valid driver's license. The claimant declined the assignment because he lacked the requisite driver's license. The claimant has commenced part-time employment at Big Lots in Davenport during the week of May 10-16, 2009.

The claimant established a claim for unemployment insurance benefits that was effective March 29, 2009 and has received benefits totaling \$950.00 for the period of March 29, 2009 through May 23, 2009.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-1-f 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:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

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 weight of the evidence in the record establishes that the claimant voluntarily quit the employment for compelling personal reasons, but not for good cause attributable to the employer. The evidence further establishes that the claimant did not notify the employer of the compelling personal reason for leaving employment prior to separating from the employment. The evidence indicates that the claimant's absence from employment exceeded ten working days. The evidence establishes that the claimant's quit was not upon the advice of a medical professional.

The claimant 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 the claimant.

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.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a and (2) provide:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence in the record indicates that the claimant has been both able to work in available for work since he established his claim for benefits on March 29, 2009. The weight of the evidence indicates that the claimant successfully completed an inpatient alcohol treatment program prior to establishing his claim for benefits. The evidence indicates at the claimant voluntarily resides in a halfway house facility that provides him with transportation to and from work. The evidence indicates the claimant has actively and earnestly sought employment and has recently obtained part-time employment.

**DECISION:**

The Agency representative's April 24, 2009, 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 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.

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.

The claimant has been able to work and available for work since establishing his claim for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw