

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JOSHUA J MOLITOR**  
Claimant

**DES STAFFING SERVICES INC**  
Employer

**APPEAL 21A-UI-24399-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (1)**

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:**

Claimant/appellant, Joshua Molitor, filed an appeal from the November 1, 2021, (reference 01) unemployment insurance decision that denied benefits regarding his voluntary quit on 06/04/20. After proper notice, a telephone hearing was conducted on January 11, 2022. The hearing was held together with Appeal 21A-UI-24400-DH-T. Claimant participated personally. Employer/respondent, Des Staffing Services, Inc., participated through Kathy Anderson, HR manager. Judicial notice of the administrative records was taken. Employer's Exhibits were admitted.

**ISSUE:**

Was the separation a layoff, discharge for misconduct or a voluntarily quit without good cause?  
Did claimant make a timely request for another job assignment?

**FINDINGS OF FACT:**

Having heard the testimony and reviewed evidence and record, the administrative law judge finds:

Claimant's first day of working an assignment was June 1, 2020. Claimant's last day worked was June 2, 2020. Claimant's first day he was assigned the task of putting rubber seals into plastic pieces for refrigerators and he was sitting. The first day went fine. His second day, he was assigned a task utilizing a sledgehammer. Claimant was previously injured (neck, shoulder, arm, throat), had a few surgeries and has restrictions on his work activities for the past five years. Claimant had failed to advise employer of his work restrictions for them to factor in work assignments. Because he failed to advise, the second day of the work assignment using the sledgehammer did not work out so well.

On June 3, 2020, claimant was a no call no show at his work assignment and was not heard from again, both regarding his work assignment and with his employer. Claimant did not return to his work assignment. Claimant did not report his work restrictions nor request a new assignment. At the time of the hearing, claimant's last application with employer was his June 1, 2020 application.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether claimant's separation was a voluntary quit for failing to timely request a new assignment. The administrative law judge concludes it was a voluntary quit for the below reasons.

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 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(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 § 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 § 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.


The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events. The more believable version is claimant did not tell anyone of his work restrictions. When he had a bad second day, didn't go back to his assignment and did not seek a new assignment. This is consistent with employer's testimony and exhibits, with the notation from the place of assignment of claimant being a no call no show for June 3 and not being heard from again as well as the employer testimony that claimant never contacted them again.

It was proven that claimant was presented with a written copy of the reporting policy and claimant did not comply with the policy by requesting a new assignment when he abandoned the assignment he was on, and as such, the separation is disqualifying pursuant to Iowa Code § 96.5(1)j. Employer had assignments should claimant sought one, both back at the time in question and at the time of the hearing should claimant want to pursue one currently. Employer did advise that claimant's last application was June 1, 2020. A new application would need to be submitted and if claimant has any work restrictions, he will need to state them.

**DECISION:**

The November 1, 2021, (reference 01) unemployment insurance decision denying benefits is **AFFIRMED**. Claimant voluntarily quit without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

  
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Darrin T. Hamilton  
Administrative Law Judge

March 24, 2022  
Decision Dated and Mailed

dh/mh