

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARIA E LIRANZO DE TEJADA
Claimant

STAFF MANAGEMENT SOLUTIONS LLC
Employer

APPEAL NO. 20A-UI-01802-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/26/20
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Maria Liranzo De Tejada filed a timely appeal from the February 20, 2020, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Liranzo De Tejada voluntarily quit on December 4, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on March 16, 2020. Ms. Liranzo De Tejada participated. Carolos Rojas-Neira represented the employer and presented additional testimony through Susan Murphy. Exhibits 1 and A through E were received into evidence. Spanish-English interpreter Bruno Robles of CTS Language Link assisted with the hearing.

ISSUE:

Whether the claimant voluntary quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer, Staff Management Solutions, L.L.C., provides workers to a Proctor & Gamble facility in Iowa City. The claimant, Maria Liranzo De Tejada, was employed by Staff Management Solutions during multiple distinct periods. The claimant's most recent period of employment began in January 2019, when the claimant started a full-time, long-term assignment at Proctor & Gamble. The claimant last performed work in the assignment on September 28, 2019. At that time, the claimant commenced a leave of absence that she requested and the employer approved. The claimant requested two months off so that she could travel to the Dominican Republic. The claimant is from the Dominican Republic. At the time the claimant went off work, her agreed upon return to work date was December 2, 2019. Before the claimant began her approved leave of absence, the employer warned the claimant that if she did not return to work by the agreed upon date, she would have to reapply before she could start a new period of employment. The claimant did not return to work on December 2, 2019. After the claimant was absence from her scheduled shifts on December 2, 3 and 4, 2019, the employer deemed the claimant to have voluntarily quit the employment. Under the employer's attendance policy, two consecutive no-call/no-show absences were considered a voluntary resignation. The employer

had previously reviewed the attendance policy with the claimant in Spanish, the claimant's native language.

During the week of December 8 - 14, 2019, the claimant contacted the employer and stated that she was ready to return to work. The employer notified the claimant that she was no longer active in the employer's payroll system and that the claimant would have to reapply for employment by speaking with Susan Murphy, Senior Account Manager.

In early September 2019, the claimant had reported to the employer a purported work injury. The employer arranged to have the claimant evaluated by a physician at University of Iowa Occupational Health. The examining physician diagnosed the claimant with non-work related "left sided chest pain with exquisitely tender soft tissue mass noted, along with left upper extremity symptoms." The physician advised the claimant to follow up with her own primary care physician and released the claimant to return to work with restrictions until she could be seen by her doctor. The employer accommodated the short-term restrictions. The claimant elected not to follow up with a physician in the Iowa City-Coralville area and decided instead that she needed to return to the Dominican Republic to seek evaluation and treatment. A doctor did not advise the claimant that she needed to separate from the assignment at Proctor & Gamble or the employment with Staff Management Solutions.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(d) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Administrative Code rule 817-24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which

caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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. Iowa Administrative Code rule 871-24.25. Where a claimant was absent for three days without giving notice to employer in violation of company rule, the claimant is presumed to have voluntarily quit without good cause attributable to the employer. Iowa Administrative Code rule 871-24.25(4).

If the employee fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits. Iowa Administrative Code rule 871-24.22(2)(j)(2).

The evidence in the record establishes a voluntary quit that was without good cause attributable to the employer. The claimant failed to return on the agreed-upon December 2, 2019 return-to-work date at the end of approved leave of absence and was then absent without notice to the employer for three or more days in violation of the employer's attendance policy. A doctor did not advise the claimant to go off work in connection with her non-work related health issue. The evidence does not support the notion that it was necessary for the claimant to go off work to address her health issue. The claimant's insistence on traveling to the Dominican Republic for medical care was unreasonable in light of the existence of quality medical care in Iowa City. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The February 20, 2020, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective December 2, 2019. In the alternative, quit was effective December 4, 2019. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

March 25, 2020
Decision Dated and Mailed

jet/scn