

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

KIMBERLY J BARKER
Claimant

PEOPLEREADY INC
Employer

APPEAL 22A-UI-20027-SC-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/06/22
Claimant: Respondent (1-R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-24.10 – Employer Participation Fact-Finding Interview

STATEMENT OF THE CASE:

On December 22, 2022, Peopleready, Inc. (employer) filed an appeal from the December 13, 2022, reference 02, unemployment insurance decision that allowed benefits based upon the determination Kimberly J. Barker (claimant) quit with good cause attributable to the employer because they completed the assignment, and the employer did not advise them that they had to request reassignment within three days of the end of the assignment. The parties were properly notified about the hearing held by telephone on January 11, 2023. The claimant did not respond to the hearing notice and did not participate. The employer participated through Markiea Thurmond, Branch Manager. No exhibits were offered into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's wage history.

ISSUES:

Did the claimant voluntarily quit employment with good cause attributable to the employer?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and charged to the employer's account?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has accepted assignments with the employer since July 15, 2012, and the most recent assignment was in a position as a flagger with one of the employer's clients. The claimant continued in that position until November 3, 2022, when the assignment ended, and their services were no longer needed. The employer has not had contact with the claimant since that time because the claimant often travels out of country to visit family.

The employer does not have a three-day policy that requires employees to request reassignment within three days of the end of an assignment. Instead, the employer has an app that allows employees to determine what assignments they are interested in daily and only requires employees to keep their paperwork updated monthly. There is no penalty for failing to accept an assignment. The claimant has complied with the employer's requirements but has not requested additional work.

The claimant filed the claim for benefits effective November 6, 2022. The only employers in the base period are the employer and Anytime Labor – Nebraska. Whether the claimant meets the definition of unemployed and, if they are unemployed, whether they are able to and available for work effective November 6, 2022 have not been investigated or adjudicated by the Benefits Bureau of Iowa Workforce Development (IWD).

REASONING AND CONCLUSIONS OF LAW:

For the following reasons, the administrative law judge concludes the claimant's separation was with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Iowa Code section 96.5(1)j 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:

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. [Emphasis added.]

The employer does not have a policy consistent with Iowa law regarding an employee's obligation to request additional assignments after an assignment ends. For purposes of this decision only, the employer provides casual, or spot labor work, given that employees are encouraged to select work they want from an app and there is no consequence for not electing to work. The claimant completed the assignment and no further work in that position was available. The claimant's election not to report for a new assignment is not considered a voluntary quit. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

As benefits are allowed as the result of the separation, the issues of overpayment and employer participation in the fact-finding interview are moot at this time. If benefits are denied for another reason, the issue of overpayment will be addressed by the Benefits Bureau.

Employees who have only spot jobs or casual work in their base period are often not considered unemployed as they are working in the same contract of hire as contemplated at hire. Whether the claimant had only spot or casual labor in the base period is remanded to the Benefits Bureau of IWD for fact-finding interviews with each employer and the claimant and an unemployment insurance decision.

Additionally, the record indicates the claimant might be out of the country while claiming benefits. If the claimant is an unemployed individual, whether they are able to and available for work effective November 6, 2022, is remanded to the Benefits Bureau of IWD for a fact-finding interview to include both parties and an unemployment insurance decision.

DECISION:

The December 13, 2022, reference 02, unemployment insurance decision is AFFIRMED. The claimant's separation from employment was attributable to the employer as the employer did not provide instruction about what to do at the end of the assignment according to Iowa Code § 96.5(1)j. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND:

Whether the claimant had only spot or casual labor in the base period and can be considered unemployed is remanded to the Benefits Bureau of IWD for fact-finding interviews with each employer and the claimant and an unemployment insurance decision.

If the claimant is an unemployed individual, whether they are able to and available for work effective November 6, 2022, is remanded to the Benefits Bureau of IWD for a fact-finding interview to include both parties and an unemployment insurance decision.



Stephanie R. Callahan
Administrative Law Judge

January 18, 2023
Decision Dated and Mailed

src/scn

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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 adquiriera 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.