

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

**MELVIN T DUO**  
Claimant

**TSI ENTERPRISES INC**  
Employer

**APPEAL NO. 24A-UI-04874-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/21/24**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

On May 14, 2024, Melvin Duo (claimant) filed a timely appeal from the May 14, 2024 (reference 01) decision that disqualified him for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on March 20, 2024 without good cause attributable to the employer. After due notice was issued, a hearing was held on June 6, 2024. Claimant participated. Sarah Fiedler represented the employer and presented additional testimony through Charity Garrison. Exhibits 1 through 4 were received into evidence.

**ISSUES:**

Whether the claimant voluntarily quit without good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Melvin Duo (claimant) worked for TSI Enterprises, Inc. during multiple distinct periods. TSI is a staffing agency. The most recent period of employment began in January 2023. From January 2023 until March 20, 2024, Mr. Duo worked for TSI in a full-time, long-term assignment at Grain Processing Corporation (GPC). Mr. Duo was part of the GPC clean-up crew. The usual work hours were 7:00 a.m. to 3:30 p.m., Monday through Friday. GPC Supervisor Don Truitt was Mr. Duo's immediate supervisor. TSI Onsite Coordinator Tad Sheets was also involved in supervising Mr. Duo's employment. TSI Account Manager Katie Cederstrom is assigned to the GPC account. Charity Garrison is a TSI manager who interacted with Mr. Duo at the end of the employment.

Throughout the employment, Mr. Duo resided on West 4<sup>th</sup> Street in Muscatine with his wife, his children, and his mother. Mr. Duo provided the West 4<sup>th</sup> Street address to the employer as his mailing address.

On March 7, 2024, Mr. Duo's mother suffered a stroke and was hospitalized at the University of Iowa Health Care Medical Center in Iowa City. Mr. Duo's mother remained in the hospital until March 15, 2024. During his mother's hospitalization, Mr. Duo remained with his mother at the hospital. On March 15, 2024, Mr. Duo's mother was discharged back to the care of her family. When Mr. Duo's mother was discharged from the hospital, the treating physician advised Mr. Duo that his mother was a fall risk and could not be left unsupervised in the home until she was able to walk without a cane. The doctor warned Mr. Duo that his mother's condition could get significantly worse if she suffered a fall while recovering from the stroke.

During the period of his mother's hospitalization, Mr. Duo was absent from work on March 6, 7, 8, 11, 12, 13, 14 and 15. On March 15, 2024, Mr. Duo provided TSI a medical excuse that covered each of the days Mr. Duo had been absent.

Mr. Duo returned to work on March 18, 2024. Mr. Duo worked on March 18, 19 and 20, 2024. Mr. Duo was then absent from shifts on March 21 and 22, 2024. Mr. Duo did not return to the employment.

On March 25, Mr. Duo sent a text message to Ms. Cederstrom indicating a need to quit the TSI employment to care for his mother. The employer encouraged Mr. Duo to consider a leave of absence in lieu of quitting the employment.

On March 28, 2024, Mr. Duo met with TSI Manager Charity Garrison to discuss a leave of absence under the Family and Medical Leave Act (FMLA) and to complete paperwork related to an FMLA leave. During the meeting, Mr. Duo and Ms. Garrison completed a Family and Medical Leave of Absence Request Form and Mr. Duo signed the form. The form indicated that Mr. Duo was requesting the FMLA leave to care for a family member. The form indicated that the parties anticipated Mr. Duo would need to be absent for about six weeks, measured from March 28, 2024. The employer noted on the form that the effective date of the FMLA might need to be adjusted to March 7, 2024. The form indicated that a medical certification might be required. See Exhibit 3. The employer did indeed require an FMLA Certification of Health Care Provider before the employer would approve the leave request. During the meeting on March 28, 2024, Ms. Garrison put together a folder for Mr. Duo that included the FMLA Request Form he signed, a copy of the FMLA policy, and an FMLA Certification of Health Care Provider form to be completed by the health care provider. Ms. Garrison told Mr. Duo to have the doctor complete the form and return it to TSI. The employer accepts the completed FMLA Certification of Health Care Provider form whether received directly from the medical provider or returned by the employee. Ms. Garrison told Mr. Duo that the form needed to be returned to the employer within 15 days. The 15 days would expire on Friday, April 12, 2024. Mr. Duo took the entire folder to his mother's healthcare provider and left the entire folder with the healthcare provider.

The employer did not receive a completed FMLA Certification of Health Care Provider from Mr. Duo or from the health care provider.

On April 9, 2024, Ms. Garrison sent Mr. Duo a text message and left him a voicemail message requesting an update on the FMLA paperwork. Ms. Duo did not respond.

On April 10, 2024, TSI Onsite Coordinator Tad Sheets called and spoke with Mr. Duo regarding the missing FMLA Certification of Health Care Provider. Mr. Duo said would follow up with the health care provider.

On April 11, 2024, Ms. Garrison sent a text message and left a voicemail message for Mr. Duo. Ms. Garrison requested that Mr. Duo contact her. Mr. Duo did not respond.

On April 12, 2024, Mr. Sheets sent Mr. Duo a text message asking for an update. Mr. Duo did not respond.

On April 12, 2024, Ms. Garrison drove to Mr. Duo's home on West 4<sup>th</sup> Street to speak with Mr. Duo about the missing FMLA Certification. Ms. Garrison observed that the home had been vacated. Mr. Duo had not provided the employer an updated address. By that time, Mr. Garrison and his family had relocated to an apartment on Park Avenue in Muscatine. Mr. Duo's wife and children had then left the family home, which left just Mr. Duo and his mother in the new home.

On Monday, April 15, 2024, Ms. Garrison sent Mr. Duo a final text message and left another voicemail message. When Mr. Duo responded by text message, Ms. Garrison told Mr. Duo that TSI would not be able to hold his position if he did not get in touch with Ms. Garrison. Ms. Garrison asked for a call. Mr. Duo said he could not call at that time.

On April 16, 2024, Ms. Garrison sent Mr. Duo another text message and left another voicemail. Ms. Garrison then prepared a letter that she mailed to Mr. Duo's West 4<sup>th</sup> Street address of record by certified mail on April 17, 2024. The letter stated the request for FMLA was denied due to Mr. Duo's failure to provide the medical documentation supporting his need to be absent to care for his mother. The letter further stated that Mr. Duo did not have Earned Time Off (ETO) to cover his continued absences and warned that the employment might be terminated if Mr. Duo did not take steps to resolve the FMLA issue. The letter directed Mr. Duo (1) to provide the FMLA medical certification and (2) to pay the unpaid portion of his health insurance premium. The letter directed Mr. Duo to resolve the matters by April 24, 2024. When Ms. Garrison mailed the letter, she included a form that denied the FMLA application due to the failure to provide the healthcare provider certification. Mr. Duo did not receive the correspondence the employer mailed on April 17, 2024. On May 5, 2024, the United States Postal Service returned the April 17, 2024 correspondence to the employer as undeliverable. Mr. Duo did not see the correspondence until the employer provided in on May 31, 2024 for the unemployment insurance appeal hearing.

On March 25, 2024, Mr. Duo applied for employment with Kraft Heinz. On April 1, 2024, Mr. Duo started employment with Kraft Heinz. On April 6, 2024, Kraft Heinz laid off Mr. Duo. Mr. Duo did not share with the employer that he had applied, accepted and started new employment during the time when employer was waiting for the FMLA Certification of Health Care Provider.

Mr. Duo provides conflicting information regarding when his mother reached the point where she was able to walk without a cane. Mr. Duo initially indicated she reached that point on April 3, 2024. But then Mr. Duo asserted his mother reached that point just two weeks before the appeal hearing, on or about May 23, 2024.

Since Mr. Duo went off of the TSI employment during the last week of March 2024, he has not attempted to return to the TSI employment.

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

Iowa Code section 96.5(1)c 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:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

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 evidence in the record establishes a disqualifying voluntary quit without good cause attributable to the employer. Mr. Duo voluntarily left the TSI employment effective March 25, 2024 for the stated purpose of caring for his ill mother. Mr. Duo indicates his mother recovered to the point of no longer needing Mr. Duo's assistance, Mr. Duo did not attempt to return to the TSI employment. During this time away from the TSI employment, Mr. Duo accepted and began new employment. Mr. Duo is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Duo must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

#### **DECISION:**

The May 14, 2024 (reference 01) decision is AFFIRMED. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective March 25, 2024. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.



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James E. Timberland  
Administrative Law Judge

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June 14, 2024  
Decision Dated and Mailed

JET/jkb

**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 Ave 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>.

**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 Ave Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**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.