

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAZMYNE FREEMAN
Claimant

APPEAL 18A-UI-11105-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 07/01/18
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin r. 871-24.25 – Voluntary Quit Without Good Cause
Iowa Admin r. 871-24.26 – Voluntary Quit With Good Cause

STATEMENT OF THE CASE:

Jazmyne Freeman, Claimant, filed an appeal from the November 13, 2018 (reference 04) unemployment insurance decision that denied benefits because she voluntarily quit work with QPS Employment Group, Inc. for personal reasons not attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on November 29, 2018 at 9:00 a.m. Claimant participated. Employer participated through Mai Lor, Unemployment Specialist, and Tiffany Wilsey, Placement Coordinator. No exhibits were admitted.

ISSUES:

Whether claimant's separation was a voluntary quit without good cause attributable to the employer.
Whether claimant made a timely request for another job assignment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed by QPS Employment Group, Inc. ("employer"), a temporary employment firm, from April 4, 2018 until her employment ended on July 9, 2018. (Lor Testimony) Claimant's only assignment through employer was as a full-time molder at West Liberty Foods in Mount Pleasant, Iowa. (Lor Testimony) In this assignment, claimant worked Monday through Friday from 6:45 a.m. until 3:30 p.m. (Lor Testimony; Wilsey Testimony)

Claimant was scheduled to work on July 5, 2018 but called West Liberty Foods to inform them that she would not be at work that day. (Claimant Testimony) During this conversation, claimant was told by West Liberty Foods that she had "pointed out" (i.e. claimant had exceeded the number of points allowed under West Liberty Foods' point-based attendance policy). (Claimant Testimony) Claimant was not told that she was terminated; claimant believed that she was terminated. (Claimant Testimony) Claimant was scheduled to work July 6, 2018, but did not report to work and did not notify West Liberty Foods or employer that she would be absent.

(Wilsey Testimony) Claimant was scheduled to work July 9, 2018, but did not report to work.
(Wilsey Testimony)

Claimant had no contact with employer between July 5, 2018 and July 9, 2018. (Claimant Testimony) On July 9, 2018 after claimant's shift was scheduled to begin, claimant notified employer that she was moving out of state and would no longer be working with employer. (Claimant Testimony) Employer accepted claimant's resignation. (Wilsey Testimony) Claimant did not seek another assignment with employer after July 5, 2018. (Claimant Testimony) Claimant received and acknowledged receipt of the three-day notice requirement on April 3, 2018. (Lor Testimony) If claimant had not quit, there was continuing work available for her. (Lor Testimony; Wilsey Testimony) Claimant's job was not in jeopardy. (Wilsey Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit her employment without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

However, Iowa Code section 96.5(1)(j) provides that the individual shall not be disqualified if:

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.

Iowa Admin. Code r. 871-24.25(2), (4) and (37) provide:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(2) The claimant moved to a different locality.

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation.

Iowa Admin. Code r. 871-24.26(15) 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:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984). The claimant has the initial burden of proving that a voluntary quit was for good cause attributable to the employer. *Id.* at § 96.6(2).

Claimant was not discharged by employer on July 5, 2018. Claimant was told that she "pointed out." Claimant was never told that she was terminated. Claimant assumed that she was terminated and stopped reporting to work. When claimant believed that her assignment ended on July 5, 2018, claimant did not notify the employer within three days or seek reassignment. Claimant was advised by employer of the three-day notice requirement of temporary employment firms. Claimant acknowledged receipt of the requirement. When claimant

contacted employer four days later, the purpose of the call was to notify employer that claimant was moving and would no longer be accepting assignments from employer. Claimant's resignation on July 9, 2018 not only evidenced her intent to terminate her employment relationship but was also an overt act of carrying out her intention. Employer accepted claimant's resignation. Claimant's resignation is presumed to be a voluntary quit without good cause; claimant has not overcome that presumption.

There are several ways to analyze this particular case but all avenues lead to the same conclusion – claimant's separation from employment was a voluntary quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The November 13, 2018 (reference 04) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs