

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLENE MCKEE
Claimant

APPEAL 17A-UI-00438-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

**OC: 12/18/16
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Admin. Code r. 871-24.27 – Voluntary Quitting – Part-time Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 9, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 3, 2017. Claimant participated. Attorney Lorraine Gaynor appeared on claimant's behalf. Employer participated through Human Resources Generalist Sarah Fiedler.

ISSUE:

Did claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?

Did the claimant voluntarily quit part-time employment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed in a long term position that was to last until November 2017, as a full-time (7:00 a.m. to 3:00 p.m.) production laborer, last assigned at EPC (Engineered Plastic Components) from November 14, 2016, and was separated from the assignment on November 16, 2016. Claimant last worked for EPC on November 15, 2016. Claimant did not complete her assignment with EPC. Claimant stopped going to the assignment (EPC) because her boyfriend was in a car accident and totaled her car. Claimant's car was her only transportation to the assignment. Claimant spoke to someone at the assignment and informed them she would not be coming back on November 16, 2016. Claimant did not contact the employer on November 15 or 16 to inform it that her assignment ended. Claimant next had contact with the employer on November 22, 2016, when the employer contacted her.

The employer has a written policy stating that employees have to check in with the employer within three days business days after the assignment ends and request an additional assignment. Claimant signed the policy and she received a copy.

On November 22, 2016, claimant accepted an assignment, a full-time position with Coles Quality Foods, and orientation was scheduled for her on November 23, 2016 at 1:00 p.m. Claimant did not show up for the orientation on November 23, 2016. The next contact the employer had with claimant was on December 5, 2016. On December 5, 2016, claimant asked for another assignment. Claimant accepted another assignment, full-time with West Liberty Foods of Iowa and orientation scheduled for her on December 15, 2016. Claimant did not show up for the orientation on December 15, 2016. The employer has not had any communication with claimant after December 15, 2016.

Claimant worked full-time for IAC Iowa City LLC for approximately five and a half years, until she was permanently laid off around December 19, 2016. In November 2016, claimant's hours with IAC Iowa City LLC were from 2:30 p.m. to 11:00 p.m. Claimant worked on assignments through the employer from April 23, 2016 to May 4, 2016 and July 28, 2016 to November 15, 2016. When claimant was hired by the employer she indicated she could work ten hours a day and overtime.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Admin. Code r. 871-24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

This rule is intended to implement Iowa Code section 96.5(1)g.

Iowa Admin. Code r. 871-24.25(1) provides:

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:

(1) The claimant's lack of transportation to the work site unless the employer had agreed to furnish transportation.

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 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.

Claimant's argument that her voluntary quit without good cause from the employer should be considered a voluntary quit from part-time employment is not persuasive. Iowa Administrative Code Rule 871-24.27 refers to an individual that "voluntarily quits without good cause *part-time* employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the *part-time* employment." (Emphasis added) Claimant's last assignment was a long term, full-time assignment with EPC, not a part-time assignment. It is also noted that although claimant argues that IAC Iowa City LLC was her regular full-time employer since 2012, she started her shift at IAC Iowa City LLC at 2:30 p.m., yet she accepted and started her assignment at EPC knowing the hours were from 7:00 a.m. to 3:00 p.m.

Therefore, claimant knew this was a long term full-time assignment at EPC, which she voluntarily quit due to transportation issues on November 16, 2016. Claimant then did not have contact with the employer after the assignment ended to inform the employer her assignment ended and request an additional assignment until November 22, 2016; more than three business days after her last assignment ended. The purpose of the statute is to provide notice to the temporary agency employer that claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The plain language of the statute allows benefits for a claimant "who notifies the temporary employment firm of completion of an employment assignment *and* who seeks reassignment." Iowa Code § 96.5(1)(j)(1) (Emphasis added).

In this case, claimant did not notify the employer of her availability or request another assignment within three business days of her ending the assignment on November 16, 2016 and, therefore, is considered to have quit the employment, even though she may have returned to seek additional assignments from the temporary agency at some later date. Benefits are denied.

DECISION:

The January 9, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant's separation was not attributable to the employer. Benefits are withheld until such time as she works in and has been paid for wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs