

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREW L HUNT
Claimant

LABOR READY MIDWEST INC
Employer

APPEAL 16A-UI-06090-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/08/16
Claimant: Appellant (2-R)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 27, 2016, (reference 02) unemployment insurance decision that denied benefits based upon a voluntary quit on April 2, 2016 due to loss of transportation. The parties were properly notified about the hearing. A telephone hearing was held on June 17, 2016. Claimant participated. Employer participated through branch manager, Kim Thompson. Nicole Petersmith registered on behalf of the employer but did not attend the hearing.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's application date with the employer was on September 10, 2015. The employer is a staffing agency. Claimant was assigned on March 28, 2016 as a general laborer at Crystal Distribution for a one-day assignment.

The employer sends text messages to employees about job assignments that meet the employees' job qualifications. Employees are not required to request an additional assignment because the employer uses a texting system that sends out potential assignments that meet the employee's qualifications. The employee then can accept or inquire for more information. If an employee sends a text "work" once a week, it keeps them active in the system. Claimant received daily messages during the work week with potential job assignments.

After his assignment with Crystal Distribution ended on March 28, 2016, claimant did not accept and get another assignment until April 7, 2016. Claimant was a no-call/no-show for his assignment on April 7, 2016. Claimant continued to receive daily text messages from the employer about assignments. Claimant did not accept and get another assignment until May 19, 2016. Claimant worked his assignment on May 19, 2016. Claimant was a no-call/no-show for a different assignment on May 20, 2016.

Claimant would reply to accept a job position, but claimant would not accept within a timely manner and the job would already be filled. There were several times that claimant accepted

the job after it had closed. Claimant never told the employer that he quit. Claimant is still considered employed. Claimant marked on his application that he did not have a car. Claimant has had transportation issues in the past. Claimant does not have any restrictions on travel. The employer does allow employees to restrict assignments based on travel distance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant has not been separated from the employer.

Iowa Code § 96.5-1 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

Claimant is currently still employed with the employer. Claimant has been receiving daily potential job assignment text messages from the employer. Claimant has attempted to accept multiple assignments; however, he sometimes waits too long to accept the assignment and it is already filled by the time he accepts. Claimant has been given at least three assignments since March 28, 2016. Benefits are allowed.

DECISION:

The May 27, 2016, (reference 02) unemployment insurance decision is reversed. Claimant has not been separated from employment. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

REMAND:

Claimant's ability to work, availability for work, and actively and earnestly seeking work issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs