

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NYIRAMUTUZO MUSANINGARE

Claimant

QPS EMPLOYMENT GROUP, INC.

Employer

APPEAL 22A-UI-01487-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/14/21

Claimant: Respondent (1R)

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant, QPS Employment Group Inc., filed an appeal from the December 15, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was started on February 8, 2022. Claimant/respondent, Nyiramutuzo Musaningare, participated personally and through a Kinyarwanda interpreter with CTS Language Link. Her brother, Anataste Gasominari, also attended. Jessica Segner represented the employer. The hearing was postponed before evidence was taken due to interpreter issues and claimant not having employer’s exhibit.

The parties were properly notified about the hearing. A telephone hearing was held on February 22, 2022. Claimant/respondent, Nyiramutuzo Musaningare, participated personally and through a Kinyarwanda interpreter with CTS Language Link. Her brother, Anataste Gasominari, also attended. Jessica Segner represented the employer. The administrative law judge took official notice of the administrative records. Employer Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer’s account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant performed work for this employer, most recently on assignment at Raining Rose from June 1, 2021 to November 12, 2021.

When claimant was hired, he was trained on employer's reassignment policy, which required she check in via phone, text message, email or in in-person with the local branch to request a new assignment and provide her availability. Under employer's policy, claimant had three business days to do so after an assignment ended. Employer stated claimant signed employer's policy but could not confirm claimant understood or that any translation of the document was provided to her. Claimant does not read English.

Employer stated claimant was notified that her assignment ended on November 16, 2021. Employer documented leaving a message with Mr. Gasominari for claimant and speaking to claimant later that day and that "she understood". The undisputed evidence is claimant did not request a new assignment. Employer stated its next documented communication was on January 27, 2022, initiated by the employer to claimant through a recruiter. The issue of whether claimant refused subsequent offers of suitable employment has not been addressed by the Benefits Bureau.

The claimant filed for and received \$1,818.00 in unemployment insurance benefits since separation with this employer. Employer did participate in a scheduled fact-finding interview on December 6, 2021. Jessica Segner attended

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation on November 16, 2021 was attributable to the employer.

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(15) provides:

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 has 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 acceptable means of communications. Working days means the normal days in which the employer is open for business.

The purpose of the statute is to provide notice to the temporary agency employer that the 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."

While employer did present a copy of a reassignment policy purportedly signed by claimant, the claimant's recollection that she did not receive or understand a notice of the reporting policy is credible. The claimant has limited English proficiency and no evidence was presented that the policy was presented to her in a way that would be meaningful or comprehensible to her. Without knowledge or understanding of the reporting policy, claimant was reasonable in not knowing she was required to contact the employer within three business days to request a new assignment. Therefore, the administrative law judge concludes the claimant's separation was non-disqualifying and benefits are allowed, provided claimant is otherwise eligible.

Because claimant is allowed benefits, the issues of overpayment and employer's relief of charges are moot.

The issue of whether claimant refused an offer of suitable work on January 27, 2022 with this employer is remanded to the Benefits Bureau for an initial investigation and decision.

DECISION:

The December 15, 2021 (reference 01) decision is affirmed. The claimant's separation was attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

REMAND:

The issue of whether claimant refused an offer of suitable work on January 27, 2022 with this employer is remanded to the Benefits Bureau for an initial investigation and decision.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
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Des Moines, Iowa 50319-0209
Fax 515-478-3528

March 10, 2022
Decision Dated and Mailed

jlb/scn

If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

Individuals who do not qualify for regular unemployment insurance benefits and were unemployed between February 2, 2020, and June 12, 2021 for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** To apply for PUA go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals> and click the link in the last paragraph under "WHAT TO EXPECT FROM THE HEARING." **The authorization number is 1 , the pin number you used for the hearing.**

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>