

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TAJANA CROSBY
Claimant

APPEAL NO. 21A-UI-12405-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIGNATURE HEALTHCARE LLC
Employer

**OC: 03/14/21
Claimant: Respondent (4R)**

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.5(12) – Voluntary Quit from Part-time Supplemental Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 7, 2021, reference 01, decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged, based on the deputy's conclusion that the claimant was discharged on March 25, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on July 27, 2021. The claimant did not provide a telephone number for the hearing and did not participate. Sheila Morris represented the employer. Exhibits 1 and 2 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant (DBRO, DBIN and KPYX). The administrative law judge took official of the available fact-finding interview materials for the limited purposes of determining whether the employer participated and whether the claimant engaged in fraud or intentional misrepresentation.

ISSUES:

Whether the claimant was discharged for misconduct, was laid off, or voluntarily quit without good cause attributable to the employer.
Whether the employment was part-time supplemental.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Signature Healthcare, L.L.C. is a staffing agency that provides temporary workers to nursing and medical facilities. Signature provides only part-time on-call (PRN) work. The employer has shifts available every day. The employer advises it has 6,000 of weekly CNA work the employer is unable to fill due to a lack of available CNA'S. Work assignments are usually brief. Employees are not required to work a particular number of shifts to remain employees. However, employees are required to remain up-to-date on training, certification and licensure requirements. The employer has no indication in its records that the claimant's credentials expired, but the employer has switched to a new tracking system that does not include information for the claimant. If the claimant desired to make herself available for shifts, she could phone or email the employer to advise the shifts and dates she would like to pick up. The

claimant could also access her online scheduling calendar and note her availability for shifts on that calendar. The claimant could use the same processes to advise the employer she did not wish to work. If the employer has an abundance of shifts to fill, the employer will call or email the claimant to offer shifts.

The claimant has worked for the employer during multiple distinct periods. The claimant worked for the employer as a Certified Nursing Assistant (CNA). When the claimant performed work for the employer, she resided in Des Moines and performed work in the Des Moines metropolitan area. The shifts the claimant worked were usually scheduled for 7:00 a.m. to 7:00 p.m.

The claimant was "rehired" in April 2018. All employees are required at the time of hire to sign to acknowledge receipt of an employee handbook. The handbook includes a page that states the employee is not guaranteed full-time employment. Employees are allowed to designate their availability, or lack of the same, on an online scheduling calendar. The claimant was only sparingly available for the part-time on-call work the employer provided. Since 2018, the claimant has only performed work for the employer at Mercy Rehab in Clive.

After the claimant performed work for the employer in the first quarter of 2019, the claimant did not return to perform additional work for the employer until December 2019. The employer did not have the claimant sign for the handbook when she returned to perform work in December 2019. Nor did the employer have the claimant sign any sort of availability statement when she returned in December 2019.

When the claimant returned to work for the employer in December 2019, she thereafter only performed work at Mercy Rehab in Clive. In December 2019, the claimant worked 12 hours. The claimant worked two shifts in January 2020 and two shifts in February 2020. The claimant marked her scheduling calendar in February 2020 to indicate she was only available to work Mondays and Tuesdays. The claimant most recently performed work for the employer on February 24, 2020.

On February 28, 2020, the claimant called the employer to withdraw or cancel her availability for six shifts she had accepted for March 2020. The shifts were scheduled for March 3, 9, 16, 17, 23 and 24, 2020. The claimant cited lack of a vehicle as the basis for the March cancellations. The claimant noted on her calendar in the employer's online scheduling system that she did not want to work in March 2020 other than March 30 and 31. The claimant notified the employer in March that she had moved to a different address in Des Moines. The claimant also marked on her calendar for April 2020 that she did not want to work that month. When an employee marks on the employee's calendar that the employee does not want to work, the employer assumes there is a reason the employee does not want to work and does not contact the employee to offer work.

The claimant established an original claim for unemployment insurance benefits that was effective November 3, 2019, prior to returning to this employer. Signature Healthcare, L.L.C. is one of multiple base period employers for purposes of the November 3, 2019 claim. Iowa Workforce Development records reflect that the claim was prompted by an October 2019 non-disqualifying discharge from regular employment with New Rue21, L.L.C. The claimant was making weekly claims at the time the claimant returned to perform additional part-time, on-call work for this employer in December 2019 and continued to make weekly claims through the end of the October 31, 2020 benefit year end date. The claimant established a new original claim and a new benefit year that was effective March 14, 2021. This employer is also base period employer in connection with the new benefit year.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) 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.

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).

Where a claimant separates from employment due to a lack of transportation to the worksite, the claimant is presumed to have voluntarily quit without good cause attributable to the employer, unless the employer had agreed to furnish transportation. See Iowa Admin. Code r. 871-24.25(1).

Iowa Code section 96.5(12) provides as follows:

12. Supplemental part-time employment. If the department finds that an individual is disqualified for benefits under subsection 1 or 2 based on the nature of the individual's separation from supplemental part-time employment, all wages paid by the supplemental part-time employer to that individual in any quarter which are chargeable following a disqualifying separation under subsection 1 or 2 shall not be considered wages credited to the individual until such time as the individual meets the conditions of requalification as provided for in this chapter, or until the period of disqualification provided for in this chapter has elapsed.

A claimant who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning 10 times the claimant's weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

The evidence in the record establishes a February 28, 2020 voluntary quit without good cause from part-time supplemental employment. The claimant indicated an intention to quit the employment and provided an overt act to terminate the employment through her February 28, 2020 withdrawal from the six shifts she had agreed to work in March 2020. The quit was ostensibly based on a lack of transportation. The employer had not agreed to provide transportation. Effective February 28, 2020, the wages from this part-time supplemental employment will be removed from the claimant's unemployment insurance claim until the claimant works in and is paid wages for insured work equal to 10 times her weekly benefit amount subsequent to the February 28, 2020 effective separation date. This employer's account shall not be charged for benefits paid for the period subsequent to the July 27, 2021 hearing date. The claimant must meet all eligibility requirements.

This matter will be remanded to the Benefits Bureau for a determination of whether the claimant has sufficient base period wage credits to be eligible for benefits without inclusion of the wages from this part-time supplemental employment. The remand shall also determine whether the claimant has been overpaid benefits, whether the claimant must repay overpaid benefits, and

whether overpaid benefits may be assessed to this employer. The remand should also address whether the claimant has been able to work and available for work since February 28, 2020.

DECISION:

The May 7, 2021, reference 01, decision is modified in favor of the employer/appellant as follows. The claimant voluntarily quit part-time supplemental employment effective February 28, 2020 without good cause attributable to the employment. Effective February 28, 2020, wages from the part-time supplemental employment shall be removed from the claim until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits paid for the period subsequent to July 27, 2021.

This matter is remanded to the Benefits Bureau for a determination of whether the claimant has sufficient base period wage credits to be eligible for benefits without inclusion of the wages from this part-time supplemental employment. The remand shall also determine whether the claimant has been overpaid benefits, whether the claimant must repay overpaid benefits, and whether overpaid benefits may be assessed to this employer. The remand should also address whether the claimant has been able to work and available for work since February 28, 2020.



James E. Timberland
Administrative Law Judge

November 3, 2021
Decision Dated and Mailed

jet/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits that are based on wages from this part-time supplemental employment. 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, but who are unemployed 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.