

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALFRED L LANG
Claimant

QPS EMPLOYMENT GROUP INC
Employer

APPEAL 15A-UI-03738-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/05/14
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 23, 2015, (reference 04) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on April 28, 2015. The claimant participated through Samuel J. Aden, attorney at law. The employer participated through Rhonda Hefter De Santisteban. Beth Lauck also testified for the employer. Claimant Exhibits One and Two were admitted into evidence.

ISSUES:

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

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was last employed on assignment for Helena Industries full time as a warehouse worker and was separated from employment on March 9, 2015.

The claimant began his assignment on March 6, 2015 at Helena Industries. He was provided a respirator at orientation due to working with chemicals. The claimant worked for one day and reported the exposure to chemicals hurt his nose on March 9, 2015 to his employer. The employer asked if the claimant wanted to end the assignment. There is disputed evidence about whether the claimant quit the assignment or resigned from the employer altogether based on the phone call with the employer. However, the claimant reported the employer's conduct during the call to be unfriendly and unhelpful under the circumstances. When the call ended, the claimant did not call or make contact with the employer within three business days to seek a new assignment, per the employer's policy. The claimant visited a doctor in April, who diagnosed him likely with allergic rhinitis (Claimant Exhibit Two). No medical documentation

was provided to the employer or at the time of hearing linking the claimant's diagnosis a month later, to the exposure of work conditions on March 6, 2015.

The employer testified its policy requires employees to report for a new assignment upon the completion of an assignment. The claimant was familiar with the employer's policy based on prior assignments with the employer.

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 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.

Iowa Admin. Code r. 871-24.25(27) 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 § 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 § 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:

- (27) The claimant left rather than perform the assigned work as instructed.

In this case, the claimant performed one day of work on his assignment before discontinuing. He called his employer to report the chemicals irritated his nose. The claimant failed to continue reporting to work. The employer's evidence was that the necessary safety equipment was provided to the claimant at orientation to complete the job safely. No medical documentation supported the claimant's decision to quit the assignment. The assignment ended based on the claimant's actions.

The next question to be addressed is whether the claimant's actions ended the assignment only, or his future employment with the QPS Employment Group Inc.

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. 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.

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.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "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 § 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 § 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.

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." (Emphasis supplied.) The claimant was aware that

he was expected to request a new assignment from the employer upon completion of any assignment, regardless of why the assignment ended and had done multiple assignments with the employer. The claimant said he did not call back the employer for new work because they had been unhelpful and unfriendly in his final call. A single negative call with the employer about an assignment does not negate the requirement to maintain contact with the employer in order to obtain a new assignment. In this case, the claimant did notify the employer of the conclusion of the assignment on March 9, 2015, when he refused to continue performing the work at Helena Industries, but did not request another assignment and, therefore, is considered to have quit the employment. Benefits are denied.

DECISION:

The March 23, 2015, (reference 04) unemployment insurance decision is affirmed. The claimant's separation was not attributable to the employer. Benefits are withheld until such time as he works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css