

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LYNETTE UPCHURCH
Claimant

APPEAL NO. 08A-UI-05810-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPHERION ATLANTIC ENTERPRISES LLC
Employer

OC: 05/04/08 R: 03
Claimant: Appellant (2-R)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

STATEMENT OF THE CASE:

Lynnette Upchurch filed a timely appeal from the June 16, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 10, 2008. Ms. Upchurch participated and presented additional testimony from her boyfriend, Jason Szabo. Kelly Harris, Cedar Rapids Branch Manager, represented the employer.

ISSUE:

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lynnette Upchurch established her employment relationship with Spherion Atlantic Enterprises (Spherion) in August 2005. Spherion is a temporary employment agency. In August 2005, Spherion placed Ms. Upchurch in a full-time temporary employment assignment at General Mills in Cedar Rapids. The assignment at General Mills ended on December 1, 2007, when General Mills revised its criteria for temporary employees to disqualify those with prior felony convictions.

On January 16, 2008, Spherion placed Ms. Upchurch in a full-time temporary employment assignment at Service Master. The assignment ended on January 25, 2008, because Service Master's peak season had ended and it no longer needed Ms. Upchurch's services. Ms. Upchurch had been absent from the assignment on January 21, 22, 23, 24, and 25, due to illness. On January 21, Ms. Upchurch notified Service Master after the scheduled start of her shift that she would be absent. Spherion's attendance notification policy required that Ms. Upchurch notify Spherion, not the client business, of her need to be absent. The employer's policy required that Ms. Upchurch contact the employer at least 30 minutes prior to the scheduled start of her shift and to make contact each day she was absent. Ms. Upchurch had signed her acknowledgment of the policy on August 8, 2005. On January 22, 2008, Ms. Upchurch was absent without notifying either Spherion or Service Master. On January 23, Ms. Upchurch contacted Spherion Client Service Supervisor Jennifer Bartley after the scheduled start of her shift to notify Mr. Bartley that she would be absent due to illness. On

January 24, Ms. Upchurch notified Spherion after the scheduled start of her shift that she was sick with the flu and could not report for work.

On January 25, Ms. Upchurch notified Ms. Bartley after the scheduled start of her shift that she was still sick with the flu and was not well enough to work. Ms. Bartley notified Ms. Upchurch that the assignment at Service Master was ending on January 25. Ms. Bartley told Ms. Upchurch to notify Spherion when she was feeling better. Ms. Upchurch's absences did not prompt Service Master to end her assignment and did not play a factor in the assignment coming to an end.

Ms. Bartley is no longer with Spherion and did not testify at the appeal hearing. The employer representative's testimony was based in part on notes Ms. Bartley had kept concerning her contact with Ms. Upchurch.

There was no more contact, or attempted contact, between Spherion and Ms. Upchurch until June 9, 2008, when Spherion attempted to call Ms. Upchurch about a possible assignment and learned that Ms. Upchurch's telephone had been temporarily disconnected. Later in June, Spherion was able to contact Ms. Upchurch at the same telephone number and placed Ms. Upchurch in a temporary employment assignment.

At the time Ms. Upchurch commenced her employment relationship with Spherion, the temporary employment agency had her acknowledge two policy documents. One policy document dealt with workers' compensation matters and the requirement that Ms. Upchurch contact the employer within three working days of the end of a work assignment to notify the employer that she was available for another work assignment. The second policy document contains 21 separate policy provisions and included a requirement that Ms. Upchurch contact Spherion immediately if there were any changes in an assignment. Ms. Upchurch received a copy of both policy documents.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Ms. Upchurch's January 25, 2008 separation from the temporary employment agency was for good cause accountable to the employer. It was.

Iowa Code section 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.

871 IAC 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.

The evidence establishes that Ms. Upchurch neither voluntarily quit the Service Master assignment nor was discharged from the assignment for misconduct. See Iowa Code section 96.5(1) and 96.5(2)(a). In other words, the assignment did not end for a reason that would disqualify Ms. Upchurch for unemployment insurance benefits.

The weight of the evidence establishes that the employer's end-of-assignment policy complied with the requirements of Iowa Code section 96.5(1)(j). The statute requires that end-of-assignment notification policy be set forth in "a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify." The statute further requires that, "The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee." The administrative law judge concludes that the additional workers' compensation provision on the document that set forth the end-of-assignment notification requirement did not prevent the notification policy from complying with Iowa Code section 96.5(1)(j). The weight of the evidence indicates that Ms. Upchurch received a copy of the notification policy.

The weight of the evidence indicates that the purpose of the end-of-assignment notification policy was fulfilled during the telephone call between Ms. Bartley and Ms. Upchurch on January 25, 2008. The evidence indicates that Ms. Bartley already knew that Ms. Upchurch's assignment was to end on January 25 and that Ms. Bartley communicated this information to Ms. Upchurch on January 25, 2008.

The administrative law judge concludes that Ms. Upchurch separated from Spherion on January 25, 2008 for good cause attributable to the employer. Accordingly, Ms. Upchurch is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

However, the evidence in the record raises a separate issue concerning Ms. Upchurch's eligibility for unemployment insurance benefits. That issue is whether Ms. Upchurch was able to work and available for work on January 25, 2008 and the period that followed. The issue was not before the administrative law judge and will need to be addressed upon a remand to the Claims Division.

DECISION:

The Agency representative's June 16, 2008, reference 01, decision is reversed. The claimant's January 25, 2008, separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

This matter is remanded to the Claims Division for determination of whether and when the claimant was able to work and available work on or after January 25, 2008.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw