

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER R KING
Claimant

APPEAL NO. 07O-UI-07776-H2T

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

**L A LEASING
SEDONA STAFFING**
Employer

**OC: 05-27-07 R: 03
Claimant: Respondent (2)**

Iowa Code § 96.5(1)j – Voluntary Leaving (Temporary Assignment)
Iowa Code §96.6(2) – **Double Affirmance**

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 18, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 29, 2007. The claimant did participate. The employer did participate through Colleen McGuinty, Unemployment Benefits Administrator, and Anna Nielson, Account Coordinator.

ISSUE:

Was the claimant discharged for work related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant was last assigned at Steamatic from March 12, 2007, to May 18, 2007. On May 21, 2007, Marty from Steamatic told the claimant that she was no longer needed due to lack of work. The claimant's last day of work for Steamatic was on May 21, 2007. On May 25, 2007, the claimant went into the Sedona office to pick up her paycheck. When she arrived at the office to pick up her check, Ms. Nielson asked her why she was not at work. The claimant said it was because Marty had fired her on May 21. Ms. Nielson asked the claimant when she was planning on telling Sedona about her assignment ending. At that that time, the claimant did not mention that she had called Brian at Sedona on May 21. The first time the claimant reported back to the employer, Sedona, that she had been let go from Steamatic was on May25 was when she went in to pick up her paycheck. The claimant failed to report to the employer within three working days as required by written policy. The claimant had received the written policy.

Claimant has received unemployment benefits since filing a claim with an effective date of May 27, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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 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. In this case, the claimant gave the employer no notice of her availability and, therefore, is considered to have quit the employment, even though claimant may have returned to work for the temporary agency at some later date. The administrative law judge is not persuaded that the claimant called anyone at Sedona on May 21 or she would have mentioned it to Ms. Nielson on May 25 when asked about her notification. Additionally, Sedona's records do not indicate that the claimant called in on May 21. Since the claimant did not report back within three days of the end of her assignment, benefits are denied.

The claimant has received benefits since filing her claim. The initial determination by a Workforce Development representative allowed benefits and the allowance was affirmed by an administrative law judge after the first hearing. Where an administrative law judge affirms a decision of the representative allowing benefits and the matter is later reversed, no overpayment results. Iowa Code section 96.6(2). The rule of "double-affirmance" relieves the claimant of an overpayment and relieves an employer of benefit charges. Therefore, the claimant will not be assessed an overpayment and L. A. Leasing will not be charged for benefits paid to her.

DECISION:

The June 18, 2007, reference 01, decision is reversed. The claimant's separation was not attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid for wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw