

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROL A DIETERS
Claimant

APPEAL NO. 07A-UI-09644-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 09/02/07 R: 04
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated October 8, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 30, 2007. The claimant participated. The employer participated by Sarah Schneck and Nikki Keifer. Employer's Exhibit One was received into evidence.

ISSUES:

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this temporary employment service from April 2, 2007 until April 9, 2007 as a clerical worker assigned to work at the client employer, Medical Associates Clinic. On April 9, 2007, the claimant was informed by Sedona Staffing that her assignment at Medical Associates Clinic had come to an end. This information was left by message on the claimant's answering machine. Although the claimant had agreed at the time of hire to re-contact the employer within three working days for additional assignments and was aware that failure to do so would be considered as a voluntary leave and could effect her unemployment insurance benefits, the claimant did not re-contact the employer within three days as specified. The next contact listed by the employer from Ms. Dieters took place approximately five months later on September 14, 2007. The claimant believes that she contacted the temporary employment service on an unspecified date within several days of her last assignment coming to an end.

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. The evidence establishes that Ms. Dieters had specifically signed and agreed to re-contact the temporary agency for reassignment within three working days after her last assignment had ended. After being informed that her assignment had ended the claimant did not re-contact the employer, as agreed, for additional potential assignments within three days. The evidence in the record indicates that the next recorded contact from Ms. Dieters occurred some months later on September 14, 2007. The temporary assignment service could not, without further contacting Ms. Dieters, assume that the claimant was available for other assignments and the company relied upon the claimant's representation that she would contact them if she wished to be reassigned per the agreement in effect between the parties. When the claimant did not re-contact the temporary employment service for a substantial period of time after her most recent assignment ended, the employer reasonably concluded that the claimant had chosen to voluntarily relinquish her position as a temporary worker for the company. In her testimony Ms. Dieters indicated that she had "forgot" about the agreement but subsequently remembered that she had signed and agreed to re-contact the company within three days.

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.

For the reasons stated herein the administrative law judge must conclude that the claimant left her employment with this temporary firm under disqualifying condition.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$1,463.00.

DECISION:

The representative's decision dated October 8, 2007, reference 01, is hereby reversed. The claimant voluntarily quit for reasons not attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$1,463.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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