

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN L ASHLINE
Claimant

APPEAL NO. 17A-UI-02184-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 04/24/16
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 15, 2017, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the claims deputy's conclusion that Ms. Ashline separated from the employer on January 13, 2017 for good cause attributable to the employer. After due notice was issued, a hearing was held on March 21, 2017. Ms. Ashline participated. Colleen McGuinty represented the employer and presented additional testimony through Joe Vermeulen. Exhibit 1 was received into evidence. The administrative law judge took official notice of the agency's administrative record of benefits paid to the claimant in connection with the additional claim that was effective January 15, 2017.

ISSUE:

Whether the claimant's separation from the temporary employment agency on January 13, 2017 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: L.A. Leasing, Inc. is a temporary employment agency. Robin Ashline had been getting work through L.A. Leasing since 2007. On March 28, 2016, Ms. Ashline commenced a series of one-day temporary work assignments at Nordstrom. The work involved processing clothing merchandise. After 2:00 p.m. each day, Ms. Ashline was expected to contact L.A. Leasing to see whether there would be work for her on the next working day. Facilitators Julie Thill and Diane Brummer would field the afternoon phone calls of employees asking about additional work at Nordstrom. Sometimes Ms. Ashline would get to speak directly with Ms. Thill or Ms. Brummer. Sometimes she would have to leave a message and would receive a return phone call. Ms. Ashline averaged 20 to 25 hours per week through the consecutive one-day assignments at Nordstrom. When there was work, Ms. Ashline's work hours for the one-day assignment would usually be 6:00 a.m. to 2:00 p.m., 8:00 a.m. to 4:00 p.m., or 9:00 a.m. to 5:00 p.m.

Friday, January 13, 2017 was the last day Ms. Ashline performed work in a one-day assignment at Nordstrom prior to a break in the pattern of one-day assignments. Ms. Ashline contacted L.A. Leasing that afternoon and was told there was no work for her the next business day. The

employer documented Ms. Ashline's work in the assignment on January 13, 2017. The employer's records do not reflect contact from Ms. Ashline that afternoon to inquire about additional work. The employer's documentation next reflects contact from Ms. Ashline on Friday, January 20, 2017, at which time Ms. Ashline asked for work. The employer did not place Ms. Ashline in another one-day assignment at Nordstrom until February 13, 2017.

In July 2013, the employer had Ms. Ashline sign an Availability Statement that obligated to contact the employer within three working days of completion of an assignment to request placement in a new assignment or be deemed to have voluntarily quit and risk consequences to her unemployment insurance benefit eligibility. The policy statement appeared as a stand-alone document with no other policies set forth on the same document. Ms. Ashline received a copy of the Availability Statement she signed.

REASONING AND CONCLUSIONS OF LAW:

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. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

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

(b) "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 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 employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to rebut Ms. Ashline's testimony that she contacted the employer on the afternoon of January 13, 2017 per protocol to request an additional assignment. The employer's testimony about such contact, or purported lack of the same, was based exclusively on the employer's written records. The employer had the ability to present testimony through Ms. Thill and/or Ms. Brummer, the persons who would have had personal knowledge of such contact, but the employer elected not to present testimony through Ms. Thill or Mr. Brummer. When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The weight of the evidence in the record establishes that Ms. Ashline completed a one-day assignment on January 13, 2017 and inquired that same afternoon about whether the employer had an additional assignment for her. At that time, the employer did not have another assignment for her. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Ashline's January 13, 2017 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Ms. Ashline is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Ashline.

DECISION:

The February 15, 2017, reference 01, decision is affirmed. The claimant's January 13, 2017 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs