

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TANYA L SMITH**  
Claimant

**APPEAL NO. 09A-UI-02981-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**"L A LEASING INC**  
**"SEDONA STAFFING**  
Employer

**OC: 01/11/09**  
**Claimant: Respondent (2-R)**

Section 96.5-1-j – Voluntary Quit from Temporary Employment

**STATEMENT OF THE CASE:**

Sedona Staffing filed a timely appeal from an unemployment insurance decision dated February 18, 2009, reference 02, that allowed benefits to Tanya L. Smith. After due notice was issued, a telephone hearing was held March 17, 2009 with unemployment benefits administrator Colleen McGuinty participating for the employer. Employer Exhibit One was admitted into evidence. Ms. Smith provided a telephone number at which she could be contacted. The number was answered by a recording when called at the time of the hearing. The administrative law judge left instructions for the claimant to call if she wished to participate in the hearing. There was no contact from the claimant until after the record had closed and the employer witnesses were no longer on line. The administrative law judge takes official notice of agency benefit payment records.

**ISSUE:**

Did the claimant leave work with good cause attributable to the employer?

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Tanya L. Smith was employed by Sedona Staffing from September 7, 2008 until January 9, 2009. She worked on assignment at the employer's client Plasti Paints. That assignment ended on January 9, 2009. Ms. Smith did not contact Sedona Staffing by the close of business on January 14, 2009 to seek reassignment. Upon being hired Ms. Smith received a copy of an availability statement that she had signed. The statement advised her that she must contact Sedona Staffing within three working days after the end of an assignment to seek reassignment.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the claimant left work with good cause attributable to the employer. She did not.

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.

The evidence in this record persuades the administrative law judge that the claimant was a temporary employee of a temporary employment service, that she was made aware of her obligation to contact the employer to seek reassignment and that she did not do so within the time limits set by statute and outlined in the availability statement. Under these circumstances, the separation was a disqualifying event.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether Ms. Smith must repay unemployment insurance benefits she has already received is remanded to the Unemployment Insurance Services Division.

**DECISION:**

The unemployment insurance decision dated February 18, 2009, reference 02, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The question of whether she must repay unemployment insurance benefits already received is remanded to the Unemployment Insurance Services Division.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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