

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER A BREDL
Claimant

APPEAL NO. 11A-UI-12392-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC
Employer

OC: 08/21/11
Claimant: Respondent (2-R)

Section 96.5-1-j – Seeking Re-assignment

STATEMENT OF THE CASE:

DES Staffing Services, Inc. filed a timely appeal from an unemployment insurance decision dated September 13, 2011, reference 01, that allowed benefits to Jennifer A. Bredl. After due notice was issued, a telephone hearing was held October 13, 2011, with Ms. Bredl participating. Human Resources Coordinator Stacy Navarro participated for the employer. Employer Exhibit 1 was admitted into evidence. The administrative law judge takes official notice of Agency benefit payment records.

ISSUE:

Did the claimant seek re-assignment within three working days?

FINDINGS OF FACT:

Jennifer A. Bredl worked a one-day assignment for DES Staffing Services, Inc. at JNA Printing Company on March 9, 2011. She did not contact the company within three working days after the end of the assignment. On March 28, 2011, Megan Conrad of DES Staffing Services attempted to contact Ms. Bredl about another assignment. The company documents all calls to and from its temporary assignment staff. The call on March 28, 2011, is the first documented attempted contact with Ms. Bredl.

The claimant has received unemployment insurance benefits since March 9, 2011. She did not report wages when filing a weekly claim for the week ending March 12, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question is whether benefits should be denied to the claimant based on her failure to seek re-employment with DES Staffing Services within three working days after March 9, 2011.

Iowa Code section 96.5-1-j disqualifies temporary employees or temporary employment services for benefits if the individual fails to seek re-assignment within three working days after the end of each assignment under some circumstances. The law requires that the employer provide separate written notice to the employee of the employee's obligation to contact the company. Exhibit 1 establishes that DES Staffing Services notified Ms. Bredl of her obligation. The testimony persuades the administrative law judge that Ms. Bredl failed to contact the company. Although Ms. Bredl testified that she called the company on March 10, 2011, her testimony was imprecise and she could not recall the name of the persons she spoke to or, in fact, any person that she spoke to at the company. The company's evidence based on its established procedures is more credible. The administrative law judge concludes that benefits must be withheld because Ms. Bredl did not seek re-assignment within three working days after March 9, 2011.

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 the claimant has received unemployment insurance benefits that must be repaid is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated September 13, 2011, reference 01, 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 repayment of benefits is remanded.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw