

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAUNA L PEDERSON

Claimant

**DOBBS TEMPORARY SERVICES INC
PRO STAFF – DES MOINES**

Employer

APPEAL NO. 07A-UI-07833-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/11/07 R: 03
Claimant: Respondent (4)**

Section 96.5-1 – Voluntary Quit
Section 96.5-1-j – Separation from Temporary Employer
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Dobbs Temporary Services (employer) appealed a representative's August 7, 2007 decision (reference 03) that concluded Shauna Pederson (claimant) voluntarily quit work with good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 29, 2007. The claimant participated personally. The employer participated by Sandy Dohlby, Account Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 4, 2007, as a full-time temporary customer service representative assigned to work at First Advantage Membership. Prior to her start date the claimant signed a "Request a New Assignment Upon Completion of an Assignment" form on May 17, 2007, and received a copy. The employer told the claimant she would earn \$10.00 per hour and earn commission at First Advantage Membership.

After the claimant's training period she worked to the best of her ability and achieved a quality percentage rating in the upper seventies. After working for almost one month the claimant asked how she could earn commission. The employer was not certain because the employer had not worked with this company before and sought clarity from First Advantage Membership. The employer discovered the claimant had to have a quality percentage rating of eighty to receive a commission. The claimant felt she could have earned a commission if she had known the percentage level. She telephoned the employer on July 9, 2007, and gave notice of her resignation from the assignment as of July 13, 2007. The claimant's last day of work at First Advantage Membership was July 13, 2007. The claimant did not seek reassignment from the employer until July 19, 2007. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5-1 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.

871 IAC 24.25(13) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by her words and actions. She resigned from her assignment. When an employee quits work because she is dissatisfied with her wages and knew the rate of pay when hired, her leaving is without good cause attributable to the employer. The claimant left work even though she knew the hourly wage and the possibility of commission when she was hired. She failed to take the reasonable step of inquiring as to the terms of the commission until a month after her hire date. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

The administrative law judge finds the claimant was separated from the employer for a disqualifying reason. As an employee of a temporary service, the claimant was required to request reassignment after the completion of her last assignment.

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 claimant did not request reassignment and has, therefore, failed to satisfy the requirements of Iowa Code section 96.5-1-j. Benefits are denied.

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.

The claimant has received benefits since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's August 7, 2007 decision (reference 03) is modified in favor of the appellant. The claimant was separated from the employer on July 13, 2007, for no good cause attributable to the employer. Benefits are withheld until she 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 claimant is overpaid benefits in the amount of \$1,735.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css