

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA A TRUITT
Claimant

APPEAL NO. 10A-UI-12071-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 06/20/10
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 17, 2010, reference 04, decision that allowed benefits in connection with a separation on or about July 23, 2010. After due notice was issued, a hearing was held on October 12, 2010. Claimant Samantha Truitt did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Chad Baker represented the employer and presented testimony from Rhonda Stout. Exhibit One was received into evidence.

ISSUE:

Whether the claimant's separation from the temporary employment agency 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: The employer is a temporary employment agency. Samantha Truitt performed work in a single, full-time, temporary work assignment. The assignment started on June 28, 2010. Ms. Truitt last performed work in the assignment on July 21, 2010. On July 21, Ms. Truitt appeared for work in "flip flops." L.A. Leasing's client required that workers wear closed-toe shoes to perform the work. On Friday, July 23, 2010, Rhonda Stout, Muscatine Branch Manager for L.A. Leasing, notified Ms. Truitt that she could not return to the assignment unless she obtained the required closed-toe shoes. Ms. Stout did not ask Ms. Truitt the obvious question of what had happened to the closed-toe shoes Ms. Truitt had been wearing to the assignment prior to July 21, 2010. Ms. Truitt indicated she would obtain the required footwear. Ms. Truitt reported to L.A. Leasing on Monday, July 26, 2010 to check in for work. Ms. Stout does not know what the discussion was with Ms. Truitt on July 26, when she checked in with L.A. Leasing.

The client business had also been concerned about Ms. Truitt's failure to have in her possession at all appropriate times the credit card type device she needed to swipe through a machine to sign in and out. On July 16, Ms. Stout spoke to Ms. Truitt about that issue. Ms. Truitt indicated the device was in her purse at home and that she could not find her purse. The client business had earlier similar concerns regarding absence of the device, but the employer is unable to provide the number of times or the days on which Ms. Truitt had been without the device.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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 weight of the evidence indicates that the employer initiated the separation from employment on Friday, July 23, 2010, when the employer told Ms. Truitt she could not return to the assignment without appropriate footwear. The employer's failure to ask Ms. Truitt the obvious question about what had happened to her footwear raises questions about what else the employer left out of the discussion with Mr. Truitt or failed to document regarding the discussion with Ms. Truitt. The evidence indicates that Ms. Truitt appeared on Monday, July 26, 2010 looking for work. The employer generated minimal documentation of that contact. What is clear is that the employer did not put Ms. Truitt back to work at that point. A reasonable person could conclude that Ms. Truitt was attempting to return to the previous assignment. Ms. Truitt's failure to wear appropriate footwear on one day was negligent, but does not establish a pattern of negligence indicating willful disregard of the employer's interests. The weight of the evidence establishes only one day, July 16, when Ms. Truitt forgot her time reporting device. While this was also negligence, it does not establish a pattern of negligence indicating willful disregard of the employer's interests. The weight of the evidence indicates that Ms. Truitt was discharged from the assignment for no disqualifying reason. See Iowa Code section 96.5(2)(a) and 871 IAC 24.32(1)(a). The weight of the evidence indicates that Ms. Truitt was in personal contact with the temporary employment firm within three working days of the notice issued by Ms. Stout on July 23, 2010.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Truitt's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Ms. Truitt is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Truitt.

DECISION:

The Agency representative's August 17, 2010, reference 04, decision is affirmed. The claimant's 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

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