

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEANNA L TIPTON
Claimant

APPEAL NO. 09A-UI-04224-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

**Original Claim: 02/04/09
Claimant: Appellant (4)**

Section 96.5-1-j – Separation from Temporary Employer
Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Deanna Tipton (claimant) appealed a representative's March 10, 2009 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits due to her separation from work with Sedona Staffing (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 10, 2009. The claimant participated personally. The employer participated by Colleen McGuinty, Unemployment Benefits Administrator.

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 having considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed part-time services from November 11, 2008, through February 13, 2009. She signed a document on October 1, 2008, indicating that she was to contact the employer within three days following the completion of an assignment to request placement in a new assignment. The claimant was given a copy of the document, which was part of the contract for hire. The claimant completed her last assignment on Friday, February 13, 2009, and sought reassignment from the employer on Monday, February 16, 2009.

The claimant filed for unemployment insurance benefits with an effective date of February 1, 2009.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant was hired as a part-time temporary worker and was still working part-time for the employer at the time she filed for unemployment insurance benefits. She was still employed in a part-time position as was agreed to at the time she was hired. The claimant is disqualified from receiving unemployment insurance benefits because she was not available for work.

For the reasons that follow, the administrative law judge concludes the claimant was not separated from the employer for any disqualifying reason.

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 requested reassignment and has, therefore, satisfied the requirements of Iowa Code section 96.5-1-j. Benefits are allowed.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because she was an eyewitness to her request for reassignment.

DECISION:

The representative's March 10, 2009 decision (reference 02) is modified in favor of the appellant. The claimant was separated from the employer for good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits. The claimant was disqualified from receiving unemployment insurance benefits until February 16, 2009, due to her unavailability for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw