

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEE R EDENS

Claimant

APPEAL NO. 10A-UI-08415-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

"L A LEASING INC

"SEDONA STAFFING

Employer

OC: 06/28/09

Claimant: Respondent (2)

Section 96.5(1)(j) – Voluntary Leaving – Temporary Employment

STATEMENT OF THE CASE:

Sedona Staffing filed a timely appeal from a representative's decision dated June 3, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice a telephone hearing was held on July 29, 2010. Claimant participated personally. The employer participated by Ms. Colleen McGuinty, UI Administrator, and Ms. Abigail Schueller, Account Manager.

ISSUE:

At issue is whether the claimant voluntarily left employment by failing to contact the temporary employment service within three days of her last work assignment.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Ashlee R. Edens began her employment with L A Leasing, Inc. d/b/a Sedona Staffing on August 25, 2009. At the time the claimant was hired she signed a separate agreement with the temporary employment service agreeing to contact the temporary service within three working days to inform them if an assignment had ended and to make herself available for additional assignments. The claimant's most recent assignment through Sedona Staffing began on December 21, 2009. Ms. Edens was assigned to work at Maquoketa Web Printing Company as a production worker. The claimant was paid by the hour by her employer, Sedona Staffing.

On January 6, 2010, Ms. Edens was informed by the client employer, Maquoketa Web Printing Company that her temporary assignment had ended. Although the claimant had signed an agreement at the time of hire agreeing to inform Sedona Staffing within three working days the assignment had ended, Ms. Edens did not notify the temporary employment service until January 12, 2010 beyond the three-day required time. No further work was available through Sedona Staffing at that time and the claimant continued to seek work by contacting other perspective employers as well as by continuing to maintain contact with Sedona Staffing. Subsequently, Ms. Edens found new employment with a chiropractic office.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily left employment by failing to contact the temporary employment service within three working days as agreed at the time of hire.

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 the record shows that although Ms. Edens agreed to contact this temporary employment service within three working days of the completion of her most recent temporary assignment, she did not do so. The claimant's most recent assignment ended with Maquoketa Web Printing on Wednesday, January 6, 2010 and the claimant was informed that the assignment had ended that day by the client employer. At the time Ms. Edens had accepted employment with Sedona Staffing, she signed a separate agreement to contact the temporary service within three working days and was informed that her failure to do so would be considered to be a voluntary quit and could affect her unemployment insurance benefits. The agreement was on a separate piece of paper and Ms. Edens acknowledged notice of the agreement and its requirements by signing it. Company records kept in the ordinary course of

business reflect that Ms. Edens did not contact the temporary employment service as required by the end of the third business day, Monday, January 11, 2010 and the claimant has shown no good cause reason for not contacting the temporary employment firm within the three working days. Claimant was given adequate notice of the statutory requirements and agreed to them. The administrative law judge, therefore, must conclude that the claimant voluntarily left employment without good cause attributable to this employer. Benefits are withheld.

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.

DECISION:

The representative's decision dated June 3, 2010, reference 01, is reversed. Claimant voluntarily quit work without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work

equal to ten times her weekly benefit amount, provided that she is otherwise eligible. The issue of whether the claimant must repay the unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs