

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHENOA L DENOLF
Claimant

APPEAL NO. 08A-UI-07634-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**LA LEASING INC
SEDONA STAFFING**
Employer

**OC: 07/27/08 R: 04
Claimant: Respondent (2-R)**

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Sedona Staffing, filed an appeal from a decision dated August 18, 2008, reference 01. The decision allowed benefits to the claimant, Chenoa Denolf. After due notice was issued, a hearing was held by telephone conference call on September 8, 2008. The claimant participated on her own behalf. The employer participated by Unemployment Benefits Administrator Colleen McGuinty and Branch Manager Carri Gilson.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Chenoa Denolf was employed by Sedona Staffing from March 18, 1998 until January 22, 2008. Her last assignment was at Pacific Coast Feather beginning January 14, 2008, for approximately two weeks. She called in to Sedona on January 17 and 18, 2008, leaving a message on the answering machine she was sick and unable to go to work. She also requested someone to call her back but no one did. On Monday, January 21, 2008, she was no-call/no-show because she assumed she no longer had a job since no one had returned her call.

On January 22, 2008, the client contacted Sedona Staffing and requested the claimant be removed from the assignment for attendance. Abby contacted Ms. Denolf and told her the assignment had been ended. The claimant was still sick at that time but never contacted anyone at Sedona Staffing once she was well to request another assignment.

Chenoa Denolf has received unemployment benefits since filing a claim with an effective date of July 27, 2008.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant stopped calling in and coming to work because she assumed she had been fired. This was based not on anything the employer told her but only because she did not get a return call which she had requested in the voice mail message she had left. She did not explain fully why she did not call in during regular office hours to talk to someone if it were important. There is nothing in the record to support her contention she was fired. Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer LaGrange v. IDJS, (Unpublished, Iowa App. 1984).

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 states pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the Claims Section. .

DECISION:

The representative's decision of August 18, 2008, reference 01, is reversed. Chenoa Denolf is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the Claims Section for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css