

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANELLE D FINKS
Claimant

APPEAL NO. 08A-UI-08262-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC
Employer

OC: 04/13/08 R: 02
Claimant: Respondent (1)

Section 96.5-1-j – Separation from Temporary Employer
Section 96.5-3-a – Refusal to Accept Suitable Work

STATEMENT OF THE CASE:

DES Staffing Services (employer) appealed a representative's September 15, 2008 decision (reference 06) that concluded Janelle Finks (claimant) was eligible to receive unemployment insurance benefits based on her separation from work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 1, 2008. The claimant participated personally. The employer participated by Amy MacGregor, Human Resources Manager, and Ashley Leydens, Placement Specialist.

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 services from October 10, 2002, through June 27, 2008. She signed a document 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 June 27, 2008, and sought reassignment from the employer. No work was available on June 30, 2008.

On August 1, 2008, the claimant offered the claimant work of approximately \$357.00 per week. The claimant's average weekly wage during her highest quarter was \$597.42. The job was offered to the claimant during the first five weeks of her unemployment.

REASONING AND CONCLUSIONS OF LAW:

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 did request reassignment within three working days and has, therefore, satisfied the requirements of Iowa Code section 96.5-1-j. Benefits are allowed.

For the reasons that follow, the administrative law judge concludes the claimant refused an offer of unsuitable work.

Iowa Code section 96.5-3-a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in

and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

- (1) One hundred percent, if the work is offered during the first five weeks of unemployment.
- (2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
- (3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
- (4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

The work was offered within the first five weeks of the claimant's unemployment and was required to provide the claimant wages 100 percent of those paid to the claimant during the highest quarter of her base period. The evidence fails to establish that the claimant would have received at least 100 percent of her average weekly wages during her highest quarter of earnings. Based on the factors found in Iowa Code section 96.5-3-a, the work offered to the claimant was not suitable work. The claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The representative's September 15, 2008 decision (reference 06) is affirmed. The claimant was separated from the employer for good cause attributable to the employer. The claimant is eligible to receive unemployment insurance benefits. She is not disqualified from receiving unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw