

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MERLEEN M NETH
Claimant

APPEAL NO. 13A-UI-11684-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

OC: 09/08/13
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 8, 2013, reference 01, decision that allowed benefits in connection with an October 11, 2012 separation. After due notice was issued, a hearing was held on November 8, 2013. Claimant Merleen Neth did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Colleen McGuinty represented the employer and presented additional testimony through Trisha Manthei. Exhibit One was received into evidence.

ISSUE:

Whether the claimant's October 11, 2012 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: Sedona Staffing is a temporary employment agency. Merleen Neth last performed work for the employer in a full-time temporary work assignment at Pacific Coast. Ms. Neth started the assignment on September 20, 2012 and completed the assignment on October 11, 2012, when Pacific Coast no longer needed her services. On October 11, 2012, a Sedona Staffing representative notified Ms. Neth that the assignment was done. There is no discussion during that contact about whether Ms. Neth desired another assignment through Sedona Staffing or whether the employer had another assignment for her. The next time the parties had contact was on October 24, 2012, when Ms. Neth contacted the employer looking for work.

In October 2011, the employer had Ms. Neth sign an Availability Statement – Three Day Notice Requirement. The policy was set forth as a stand-alone policy on a document that contained no other policies. The policy clearly and concisely stated that Ms. Neth was obligated to contact Sedona Staffing within three working days of the end of an assignment to request another

assignment and that if she did not do that, the employer would deem her to have voluntarily quit and the failure to make contact would affect Ms. Neth's unemployment insurance benefit eligibility. The employer provided Ms. Neth with a copy of the document she signed in October 2011.

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.

Ms. Neth did not participate in the hearing and the evidence is, therefore, limited to the evidence presented by the employer. That evidence indicates an end-of-assignment policy that complied with the requirements of Iowa Code section 96.5(1)(j) and that the employer provided Ms. Neth with a copy of the policy. The evidence also indicates that Ms. Neth completed an assignment on October 11, 2012. The employer spoke with Ms. Neth that day, but no one brought up the prospect of a further assignment. Ms. Neth then made no further contact with Sedona Staffing until 13 days later. Because Ms. Neth failed to make further contact with the employer within three working days of the end of the assignment, despite being notified in writing of her obligation to make such contact, the administrative law judge concludes that Ms. Neth's October 11, 2012 separation from the employer was without good cause attributable to the employer. Ms. Neth is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Neth must meet all other eligibility requirements. Because the separation was without good cause attributable to the employer, the employer's account will not be charged for benefits paid to the claimant for the period beginning on or after the entry date of this decision.

This matter is remanded to the Claims Division for an initial decision on whether the claimant has been overpaid benefits, whether the claimant is required to repay benefits, whether the employer participated in the fact-finding interview, whether the employer's account may be charged for benefits paid to this point.

DECISION:

The Agency representative's October 8, 2013, reference 01, decision is reversed. The claimant's October 11, 2012 separation from the temporary employment agency was without good cause attributable to the temporary employment agency. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. Because the separation was without good cause attributable to the employer, the employer's account will not be charged for benefits paid to the claimant for the period beginning on or after the entry date of this decision.

This matter is **remanded** to the Claims Division for an initial decision on whether the claimant has been overpaid benefits, the amount of the overpayment, whether the claimant is required to repay benefits, whether the employer participated in the fact-finding interview, and whether the employer's account may be charged for benefits paid to this point.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs