

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRIE R SCHLOTFELDT
Claimant

APPEAL NO. 09A-UI-07889-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 04/19/09
Claimant: Respondent (2-R)

Section 96.5-1-j – Voluntary Leaving/Temporary Employment
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Sedona Staffing filed a timely appeal from the representative's May 21, 2009, reference 01, decision. It held claimant eligible for unemployment insurance benefits. After due notice, a telephone hearing was scheduled for and held on June 16, 2009. Although duly notified, the claimant did not participate. The employer participated by Brenda Lampe, Account Manager and Chad Baker, Workers' Compensation Administrator.

ISSUE:

The issue is whether the claimant voluntarily quit employment by failing to contact the temporary employment service within three days of the completion of a work assignment.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record finds: The claimant was employed by Sedona Staffing, a temporary employment service. Ms. Schlotfeldt began her last assignment on November 13, 2008 and was assigned to work at the Clifton Gunderson Tax Preparation Company as a clerical worker. The claimant was paid by the hour during the long-term assignment. At the time of hire, Ms. Schlotfeldt signed an agreement to contact the temporary employment service within three days of the completion of a temporary work assignment. The claimant was informed that failure to do so could affect her unemployment insurance benefits and that the claimant's failure to contact the temporary employment agency would be considered a voluntary quit.

Upon completing her assignment with the tax preparation company on April 15, 2009, Ms. Schlotfeldt did not contact Sedona Staffing to inform them that the assignment had ended. Subsequently, the temporary employer was informed by the client of the end of the assignment. Sedona Staffing has had no further contact from Ms. Schlotfeldt. Additional assignments were available to the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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 establishes that the claimant signed a written copy of the reporting policy at the time that she was hired by Sedona Staffing. Under the terms of the agreement, the claimant was required to contact the temporary service within three days after the completion of her most recent assignment. The evidence in the record establishes the claimant did not contact Sedona Staffing after the completion of her assignment with Clifton Gunderson Tax Preparation Company. Additional work assignments were available to the claimant, however, Ms. Schlotfeldt did not contact the temporary service as agreed.

Under the provisions of section 96.5-1-j of the Employment Security law, the failure of the claimant to notify the temporary employment firm of the completion of the assignment within three working days is deemed as a voluntary quit, as the claimant was advised in writing of her

obligation to do so. It must therefore be held that the claimant voluntarily quit employment for reasons not attributable to the employer.

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 May 21, 2009, reference 01, is reversed. Claimant's separation was not attributable to the employer. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount,

providing that she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

srs/css