

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER E VANDEE
Claimant

APPEAL NO. 09A-UI-01803-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADECCO USA INC
Employer

**OC: 01/04/09 R: 03
Claimant: Respondent (2-R)**

Section 96.5(1)j – Quit/Temporary

STATEMENT OF THE CASE:

The employer, Adecco, filed an appeal from a decision dated January 27, 2009, reference 01. The decision allowed benefits to the claimant, Jennifer VanDee. After due notice was issued a hearing was held by telephone conference call on February 25, 2009. The claimant participated on her own behalf. The employer participated by Staffing Consultant Chris Delfouse and was represented by TALX in the person of Diane Elkins.

ISSUE:

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

FINDINGS OF FACT:

Jennifer VanDee was employed by Adecco from March 10, 2008 until July 28, 2008. During that time she had two assignments, the last one at Square D beginning July 14, 2008. On July 28, 2008, as she was preparing to go to work, Ms. VanDee suddenly became ill and lost consciousness. She was taken to the hospital and was not released until mid-December 2008. Her mother had contacted Adecco on the day she was hospitalized and the employer said for the claimant to call when she was released.

Ms. VanDee maintains she contacted Adecco on December 12 or 13, 2008, and the woman with whom she spoke said there was no full-time work available in the Cedar Rapids, Iowa, area, the closest assignment was Dubuque. Staffing Consultant Chris Delfouse indicated Adecco did not have any female office employees in the Cedar Rapids location, just himself and another male staffing consultant. He did acknowledge the claimant called on December 16, 2008, to ask what her beginning and ending dates of employment were as she intended to file for unemployment benefits. However, because she did not specifically ask him for another assignment, he did not tell her he had a full-time position at a client company in the city.

Jennifer VanDee has received unemployment benefits since filing a claim with an effective date of January 4, 2009.

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.

The claimant was not able to call the employer within three days of the end of her assignment because she was hospitalized. Adecco was, however, notified of her medical problems and only requested she contact the office when she was able to work. She did not do so, only called to ask for her employment dates so she could file for unemployment benefits.

Although Ms. VanDee maintained she did call to ask for work, she stated she spoke with "the woman who answered the phone," but there was no woman working in the Adecco office in Cedar Rapids, Iowa, in December 2008, so the conversation could not have taken place. She did not call and request another assignment at the earliest possible time. Under the provisions of the above Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

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.

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 UIS division.

DECISION:

The representative's decision of January 27, 2009, reference 01, is reversed. Jennifer VanDee 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 UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs