

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LATISHA R MCKNIGHT
Claimant

APPEAL NO. 10A-UI-08228-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

**OC: 04/25/10
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 4, 2010, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on July 26, 2010. Claimant Latisha McKnight participated and presented additional testimony through Jason Harris. Colleen McGuinty, Unemployment Benefits Administrator, represented the employer and presented additional testimony through Dennis Leeser, Account Manager. Exhibit One was received into evidence.

ISSUE:

Whether the claimant's 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: The employer is a temporary employment agency. Beginning in October 2009, claimant Latisha McKnight performed work for the employer in a series of day-labor assignments at the Nordstrom Distribution Center in Dubuque. Dennis Leeser, Account Manager and Sedona Staffing on-site supervisor at the Nordstrom facility, was Ms. McKnight's immediate supervisor. Outside of her initial application for employment, which she completed at the Sedona Staffing office, the remainder of Ms. McKnight's contact with the temporary employment agency was through Mr. Leeser. At the end of each work day, Mr. Leeser would notify Ms. McKnight whether her services were needed the next day. If her services were not needed the next day, Mr. Leeser instructed Ms. McKnight to wait for his call regarding when work was next available.

Ms. McKnight last performed work in a one-day assignment at the Nordstrom facility on January 29, 2010. At the end of that day's work, Mr. Leeser notified Ms. McKnight that there would be no more work for her that month and that he would call her when more work was available. Mr. Leeser did not direct Ms. McKnight to contact the local Sedona Staffing office to inquire about additional work assignments.

On February 1, 2010, Ms. McKnight relocated with her children to Rockford, Illinois. On February 15, 2010, Mr. Leaser called the contact number he had for Ms. McKnight to whether she was available for further work at the Nordstrom facility. Ms. McKnight was not available for work at the Dubuque facility because she had relocated too far away.

At the start of Ms. McKnight's employment, the employer had her execute an "Availability Statement." The Availability Statement notified Ms. McKnight of her obligation to notify Sedona Staffing at the end of a work assignment to advise of her availability for an additional assignment. The policy was set out as a separate policy on a document containing no other policies. Ms. McKnight received a copy of the document she signed.

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.

Despite having Ms. McKnight sign the Availability Statement prior to her first day-labor assignment at the Nordstrom facility, the weight of the evidence indicates that the employer's own conduct did not conform to the policy set out on the Availability Statement—insofar as the employer now asserts an obligation to contact the local Sedona Staffing office. Instead, the employer had Ms. McKnight report directly to on-site supervisor Dennis Leaser and obtain information regarding additional work assignments directly from Mr. Leaser. The weight of the evidence indicates that the employer did not direct Ms. McKnight to contact Sedona Staffing's local office to seek other assignments. Ms. McKnight reasonably relied upon the system of contact directed by Mr. Leaser. Ms. McKnight was in direct contact with Mr. Leaser on January 29, 2010 for the specific purpose of seeing there was additional work for her. There was not. Ms. McKnight fulfilled her obligation under Iowa Code section 96.5(1)(j) and her election thereafter to relocate and not take further assignments from the employer would not disqualify her for unemployment insurance benefits. Ms. McKnight's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Ms. McKnight is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. McKnight.

DECISION:

The Agency representative's June 4, 2010, reference 03, decision is affirmed. The claimant's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw