

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINA M FITZGERALD
Claimant

APPEAL NO. 11A-UI-07596-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACTION STAFFING SERVICES INC
Employer

**OC: 09/26/10
Claimant: Respondent (1)**

Section 96.5-1-j – Separation from Temporary Employer

STATEMENT OF THE CASE:

Action Staffing Services (employer) appealed a representative's June 3, 2011 decision (reference 05) that concluded Christina Fitzgerald (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 7, 2011. The claimant participated personally. The employer participated by Rita Weaver, accounting/human resources manager.

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 January 24 through May 9, 2011. She signed a document before her first assignment, on January 5, 2011, 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 not given a copy of the document, which was part of the contract for hire.

The claimant was assigned to work at Iowa Student Loan as a default prevention counselor. She was tardy to work 22 times due to weather and day care hours. On February 24, 2011, the employer and a representative from the assignment met to discuss the claimant's attendance. The representative agreed to modify the claimant's hours in order to align with the day care hours. The employer notified the claimant that further infractions could result in termination from employment. On April 13, 2011, the employer issued the claimant a written warning for failing to lock her desk.

On May 9, 2011, the claimant asked the representative from Iowa Student Loan if she could change her hours on May 16, 2011. The claimant had a custody hearing that she was required to attend. The representative told the claimant that if she attended the custody hearing, the

absence would count against the claimant. On May 10, 2011, the employer told the claimant that her assignment had ended and asked if the employer should continue to look for work for the claimant. The claimant asked the employer to tell her if they found work for her. The employer said it would but no work was available at that time. The employer never contacted the claimant. The claimant filed a claim for unemployment insurance benefits with an effective date of May 8, 2011.

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.

Under the Iowa Code, the employer must advise the claimant of the three-day notice requirement and give the claimant a copy of that requirement. The notice requirement cannot be a part of the contract for hire. The employer did not provide the claimant with the proper

notice requirements and has, therefore, failed to satisfy the requirements of Iowa Code section 96.5-1-j. Benefits are allowed.

DECISION:

The representative's June 3, 2011 decision (reference 05) 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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw