

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANNON L BURNETTE
Claimant

APPEAL NO. 08A-UI-05781-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADECCO USA INC
Employer

**OC: 02/03/08 R: 02
Claimant: Respondent (2)**

Section 96.5(1)j – Quit/Temporary
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Adecco, filed an appeal from a decision dated June 11, 2008, reference 08. The decision allowed benefits to the claimant, Shannon Burnette. After due notice was issued, a hearing was held by telephone conference call on July 9, 2008. The claimant participated on her own behalf. The employer participated by Staffing Consultant Marsha Heck and was represented by Frick UC Express in the person of Alyce Smolsky. Exhibits One and Two were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Shannon Burnette was employed by Adecco from March 7 until April 30, 2008. Her last assignment began March 19, 2008, and was to last through August and possibly longer. However, she was released from the assignment on April 25, 2008, by the client due to unsatisfactory work performance.

The claimant had signed a notification agreement on February 28, 2008, which informed her she was to call within three working days of the end of each assignment to request more work or else she would be considered a voluntary quit. Ms. Burnette did not contact the employer after the end of her assignment.

Shannon Burnett has received unemployment benefits since filing an additional claim with an effective date of May 4, 2008.

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 maintains she contacted Adecco on April 25, 28 and 29, 2008, to request another assignment. However, the employer has no record of any of these calls and the claimant did not provide any verification of any of the calls even though such call information is available from her cellular provider. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the claimant is not more persuasive than the employer's denial of having received any calls. The claimant has not carried her burden of proof to establish that she contacted Adecco within three days of the end of the assignment. Under the provisions of the above Administrative 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 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of June 11, 2008, reference 08, is reversed. Shannon Burnette is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$2,945.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css