

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIAN R STURTZ
Claimant

APPEAL NO. 09A-UI-11645-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPHERION ATLANTIC ENTERPRISES LLC
Employer

OC: 06/14/09
Claimant: Appellant (2-R)

Iowa Code Section 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 11, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 9, 2009. Claimant Marian Sturtz participated and presented additional testimony through Darrell Sturtz and Jody Propst. Misty Evans, Customer Service Representative, represented the employer.

ISSUE:

Whether Ms. Sturtz's June 12, 2009 leaving disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Marian Sturtz commenced her employment with Spherion Staffing, L.L.C. in March 15, 2007. The employer is a temporary employment agency. Ms. Sturtz was placed in temporary, full-time work assignments at Land-O-Lakes. Ms. Sturtz's immediate supervisor at Land-O-Lakes was Greg Ally. Dawn Anderson of Land-O-Lakes also exercised supervisor authority over Ms. Sturtz's work at that company.

Ms. Sturtz established a claim for benefits that was effective June 14, 2009. On June 12, 2009, Ms. Sturtz ended a temporary work assignment at Land-O-Lakes so that she could go on vacation. The work assignment at Land-O-Lakes was not yet complete. Ms. Sturtz expected the assignment would be ended at the end of June, but neither Spherion Staffing nor Land-O-Lakes had notified Ms. Sturtz that she would be laid off from the assignment.

On June 12, Ms. Sturtz avoided contact with Mr. Ally at Land-O-Lakes because she knew that Mr. Ally would not approve of her separation from the assignment on that date. Ms. Sturtz had previously approached Mr. Ally about going on vacation in June. Mr. Ally had asked Ms. Sturtz to continue reporting for the assignment and that he would let her know when she could leave the assignment to go on vacation. Ms. Sturtz did not comply with this request. On June 12, Ms. Sturtz left a note for Mr. Ally and Ms. Anderson at Land-O-Lakes. Ms. Sturtz submitted the note with her timecard. The note indicated that she would not be returning to the assignment

because she was going on vacation with her husband. Ms. Sturtz did not have vacation benefits in connection with the temporary employment arrangement.

On the same day, Ms. Sturtz contacted her employer, Spherion Staffing, to indicate that she was taking time off and spoke with Misty Evans, Customer Service Representative. Ms. Sturtz asked Ms. Evans whether the manner in which she separated from the assignment would leave her eligible for unemployment insurance benefits. Ms. Evans told Ms. Sturtz she would most likely not be eligible for benefits since she had voluntarily separated from the assignment before the assignment was completed.

Ms. Sturtz then went traveling with her husband.

On June 25, Ms. Sturtz telephoned Land-O-Lakes and left a voice mail message for Mr. Ally. In the message, Ms. Sturtz said her two weeks of vacation were almost up. Ms. Sturtz asked whether she should return or whether she was on more vacation time. Ms. Sturtz said that if Mr. Ally did not call her, she would file for unemployment insurance benefits. Ms. Sturtz did not contact her actual employer, Spherion Staffing.

On July 11, Ms. Sturtz made additional telephone calls to Mr. Ally of Land-O-Lakes to inquire whether she was needed back at the assignment. Mr. Ally eventually responded to the calls and advised Ms. Sturtz she could start a new assignment on July 27, 2009.

On July 21, Ms. Sturtz finally contacted her employer, Spherion Staffing. Ms. Sturtz was concerned that a Workforce Development representative had indicated Spherion Staffing said she quit her assignment. Ms. Sturtz indicated in her message that she would be returning to Land-O-Lakes on July 27, 2009. This was the first Spherion Staffing knew of Ms. Sturtz commencing a new assignment at Land-O-Lakes.

Ms. Sturtz did indeed commence a new assignment at Land-O-Lakes on July 27, 2009 and continued in the new assignment at the time of the appeal hearing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

When a person voluntarily separates from employment for the purpose of commencing a vacation, the separation is presumed to be a voluntary quit without good cause attributable to the employer. See 871 IAC 24.25(25).

Ms. Sturtz voluntarily terminated that temporary employment work assignment on June 12, 2009, when she unilaterally decided to commence an unapproved extended period of time off before the assignment ended. The separation from the work assignment was without good cause attributable to Ms. Sturtz's employer, Spherion Staffing. Effective June 12, 2009, Ms. Sturtz is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's August 11, 2009, reference 01, decision is reversed. The claimant voluntarily separated from the temporary employment work assignment on June 12, 2009 without good cause attributable to the employer. Effective June 12, 2009, the claimant is disqualified for benefits until she has worked in a been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css