

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LILA N COOK
Claimant

APPEAL NO: 09A-UI-02113-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

OC: 12/07/08

Claimant: Respondent (1)

871 IAC 24.1(113)a – Layoff
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

L A Leasing, Inc. / Sedona Staffing (employer) appealed a representative's February 4, 2009 decision (reference 02) that concluded Lila N. Cook (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 4, 2009. The claimant participated in the hearing. Chad Baker appeared on the employer's behalf and presented testimony from one witness, Abby Schuler. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The employer is primarily a temporary employment firm. The claimant began a temp-to-hire assignment with the employer on May 2, 2002 as a production welder with the employer's business client. As of July 2002 the assignment was ended and completed when the claimant became a regular full time employee of the employer's business client. As of the date of the hearing the claimant continued in her capacity as a full time production welder employed by the business client.

In approximately April 2003 the claimant started doing some housekeeping work at the business client, working a half hour to an hour and a half per day as her regular work schedule permitted, but not on scheduled hours. For this work she was treated as a coemployee of both the business client and the employer; the business client chose to run the payroll for this position through the employer. However, the claimant had no contact with the employer for this other work she did for the business client, and the business client was completely in control as to which employee it chose to earn the additional money through doing the housekeeping work. In

fact, as of January 9, due to a change in the business client's scheduling of the claimant's work, the business client gave the housekeeping work to someone else.

As it had in prior years, the business client had a shut down for the holidays, this past year beginning as of about November 20, 2008. As she had in the past, the claimant established an unemployment insurance benefit year effective December 7, 2008 because of this layoff. The claimant therefore did not perform any work for either the business client or the employer for approximately the first couple weeks of December, until she was recalled by the business client to do some machine cleaning on or about December 17.

The employer had not challenged the claimant's eligibility for unemployment insurance benefits in prior years, even though she had been "employed" by the employer in this additional coemployee capacity since 2003. The employer asserted that since the claimant's "temporary assignment" with the business client had "ended" as of about November 20 that she was required to contact the employer to advise it of the "ending of the assignment" and to seek reassignment.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, 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 from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that she voluntarily quit by not notifying the temporary employment firm/employer of the ending of an assignment and seeking reassignment. The type of relationship the claimant had with the employer was not of the type of temporary employment governed by Iowa Code § 96.5-1-j. Rather, she was a coemployee of the employer and the business client whose payroll for the additional work was merely run through the employer's payroll for the business client's convenience, not because the employer retained any control over the claimant's employment. Further, given the many years the claimant, the employer, and the business client had followed this same pattern without the employer asserting that the claimant had some obligation to seek another assignment during the time the business client was shut down for the holidays, the employer cannot now establish that the claimant reasonably should have known she had some obligation to check in with the employer for other work during the holiday layoff. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The temporary separation on or about November 20, 2008 between the claimant, the business client, and the employer was a layoff due to the holiday shut down. As there was not a disqualifying separation, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's February 4, 2009 decision (reference 02) is affirmed. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css