

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARETHA C FERGUSON
Claimant

APPEAL NO. 09A-UI-04717-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

OC: 02/22/09
Claimant: Respondent (2-R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 19, 2009, reference 05, decision that allowed benefits in connection with a May 6, 2008 separation from the employment. After due notice was issued, a hearing was held on April 21, 2009. Claimant Sharetha Ferguson did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Chad Baker represented the employer and presented testimony through Anna Nielsen, Account Coordinator. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

ISSUE:

Whether the claimant voluntarily separated from the temporary employment agency on May 6, 2008 for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sharetha Ferguson established her employment relationship with Sedona Staffing in May 2005. On April 25, 2008, Ms. Ferguson notified Sedona Staffing Account Coordinator Anna Nielsen that she was about to finish her General Education Diploma and wanted to be placed in a third-shift assignment at Bertch Cabinets in Jesup. On April 28, 2008, Ms. Ferguson started a full-time, third-shift assignment at Bertch Cabinets. On May 6, 2008, Ms. Ferguson contacted Ms. Nielsen. Ms. Ferguson told Ms. Nielsen that she was not returning to Bertch Cabinets and wanted to pursue a first-shift assignment in Waterloo. The employer did not have any such assignments at that time. Ms. Ferguson was placed back on the "available" list and was next placed in an assignment on November 25, 2008.

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.

When a person voluntarily separates from employment due to dislike of the shift, the voluntary separation is presumed to without good cause attributable to the employer. See 871 IAC 24.25(18).

When a person voluntarily separates from employment due to the commuting distance, but knew about the commuting distance when hired, the voluntary separation is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(30).

The evidence in the record indicates that Ms. Ferguson voluntarily separated from her full-time assignment at Bertch Cabinets in Jesup because she did not like the shift she had agreed to work and because of the commuting distance. Ms. Ferguson had specifically requested a third-shift position. Ms. Ferguson knew about the commute when she requested and accepted the assignment.

Ms. Ferguson voluntarily separated from the employment without good cause attributable to the employer on May 6, 2008. Accordingly, Ms. Ferguson is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount after the May 6, 2008 separation, 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 representatives March 19, 2009, reference 05, decision is reversed. The claimant voluntarily separated from the employment without good cause attributable to the employer on May 6, 2008. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount since the May 6, 2008 separation, provided she is otherwise eligible. The employer's account shall not be charged.

The matter will be 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