

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER MOLINA
Claimant

APPEAL NO. 15A-UI-12457-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 10/18/15
Claimant: Respondent (2/R)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 6, 2015, reference 02, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been laid off on October 20, 2015. After due notice was issued, a hearing was held on November 30, 2015. Claimant Jennifer Molina participated and presented additional testimony from Ivelisse Echevaria. Chad Baker represented the employer and presented additional testimony through Tanner McCutcheon and Corey Mesta. Spanish-English interpreter Jose Tormos of CTS Language Link assisted with the hearing. Exhibit One was received into evidence. The administrative law judge took official notice of the Agency's administrative record or benefits disbursed to the claimant.

ISSUES:

Whether the claimant's October 20, 2015 separation from the temporary employment agency was for good cause attributable to the employer.

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: L A Leasing, Inc./Sedona Staffing is a temporary employment agency. Jennifer Molina is a Spanish speaking person who most recently performed work for the employer in a full-time, temporary assignment that started on September 8, 2015. The assignment was at Westrock, formerly known as RockTenn. Ms. Molina last performed work in the assignment on October 20, 2015. The client business ended the assignment on October 21, 2015, because it had decided to cease operations at the facility where Ms. Molina worked. On October 21, 2015, a coworker notified Ms. Molina in Spanish that she should not to report for work because the assignment had ended. A Sedona Staffing representative left a voice mail message for Ms. Molina with the same information. Ms. Molina did not make further contact with the temporary employment agency.

On September 26, 2014, the employer had Ms. Molina sign an Availability Statement, written in English, that obligated Ms. Molina to contact the temporary employment agency within three working days of the completion of an assignment or be deemed to have voluntarily quit and risk being disqualified for unemployment insurance benefits. The employer knew that Ms. Molina's native language was Spanish. Though the employer had a Spanish translation of the Availability Statement, the employer did not have Ms. Molina sign the Spanish version or provide a copy of the Spanish version to her. The employer provided Ms. Molina with a copy of the Availability Statement she had signed. Ms. Molina is from Puerto Rico. Though Ms. Molina's native language is Spanish, Ms. Molina is able to read English. Ms. Molina studied English in school for nine years before relocating to the continental United States a year ago. At the time Ms. Molina started with the employer, the employer discussed with her in Spanish her obligation to contact the employer within three working days of the end of the assignment. The employer did not tell Ms. Molina that she would be deemed to have voluntarily quit or that she might be disqualified for unemployment insurance benefits if she failed to make the required contact.

Ms. Molina established a claim for unemployment insurance benefits that was deemed effective October 18, 2015 and received \$829.00 in benefits for the period of October 18, 2015 through December 19, 2015.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code § 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code § 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The evidence in the record indicates that Ms. Molina completed an assignment on October 21, 2015, at which time the client business ended the assignment due to a decision to cease operations at the facility where Ms. Molina performed her work. Ms. Molina signed and received a copy of the employer's availability statement. Ms. Molina understood that she was obligated to contact the temporary employment agency within three working days of the end of the assignment. The text of the employer's Availability Statement complies with the statute. Given Ms. Molina's substantial education in English and her ability to read English, the English version of the employer's availability statement constituted sufficient notice to Ms. Molina of her obligation to contact the employer within three working days of the end of the assignment or be deemed to have voluntarily quit and risk being disqualified for unemployment insurance benefits. Because Ms. Molina failed to make the required contact with the temporary employment agency upon completion of the temporary work assignment, her October 21, 2015 separation from the employer was without good cause attributable to the employer. Ms. Molina is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Molina must meet all other eligibility requirements. The employer's account will be relieved of liability for benefits paid to Ms. Molina for the period beginning December 24, 2015.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits, even if the claimant acted in good faith and was not at fault in receiving the benefits. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The matter of whether the amount overpaid should be recovered from the claimant or charged to the employer under Iowa Code § 96.3-7-b is remanded to the Benefits Bureau.

DECISION:

The November 6, 2015, reference 02, decision is reversed. The claimant's October 21, 2015 separation from the temporary employment agency was without good cause attributable to the temporary employment agency. The claimant is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account will be relieved of liability for benefits paid to the claimant for the period beginning December 24, 2015.

The matter of whether the amount overpaid should be recovered from the claimant or charged to the employer under Iowa Code § 96.3-7-b is remanded to the Benefits Bureau.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css