

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CINDY SWARTZENDRUBER

Claimant

APPEAL NO: 13A-UI-01316-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AVENTURE STAFFING & PROFESSIONAL

Employer

OC: 12/23/12

Claimant: Respondent (2/R)

Iowa Code § 96.5-1-j - Voluntary Quit of Temporary Employment

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Aventure Staffing & Professional (employer) appealed an unemployment insurance decision dated February 1, 2013, reference 02, which held that Cindy Swartzendruber (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 5, 2013. The claimant participated in the hearing. The employer participated through Kayla Neuhaufen, Human Resources Representative. Employer's Exhibits One and Two were admitted into evidence. 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:

The issue is whether the claimant is disqualified for failure to contact the temporary employment agency within three working days after the completion of her assignment, when and if notified of this requirement at the time of hire.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment agency and the claimant was hired on April 11, 2012. At the time of hire, she signed an availability statement which advised her of the requirement to check in for additional work after the completion of an assignment. The employer requires employees to check in within three working days after an assignment ends to provide the employer notification of the claimant's availability and failure to do so would be considered as a voluntary quit.

At the time of hire, the claimant also received an employee handbook which states on page four that an employee is considered a voluntary quit if the employee does not call the employer upon completion of the job assignment. The claimant signed for receipt of the handbook and the handbook acknowledgement also confirmed that she should review the handbook. The claimant was assigned to Victor Manufacturing on October 1, 2012 and before her assignment was over, she asked Carol Thomason whether she was aware of any other work. The

assignment ended on November 2, 2012 and the claimant did not check in for work after the completion of her assignment. She contacted the employer for additional work on December 18, 2012 but the employer considered her to have voluntarily quit as of November 7, 2012.

The claimant filed a claim for unemployment insurance benefits effective December 23, 2012 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1. The employer herein is a temporary employment agency and temporary employment agencies are governed by Iowa Code § 96.5-1-j, which places specific restrictions on both the employer and the employee with regard to qualification for unemployment insurance benefits after a voluntary separation.

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.

The evidence indicates the claimant knew or should have known she was required to contact the employer to request additional work after the completion of her assignment on November 2, 2012. She did not contact the employer until December 18, 2012. The claimant did not satisfy the requirements of Iowa Code § 96.5-1-j and is disqualified from receiving unemployment insurance benefits as of December 23, 2012.

Iowa Code § 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 § 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 could 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 unemployment insurance decision dated February 1, 2013, reference 02, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs