

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMUEL NINO
Claimant

APPEAL NO. 12A-UI-00186-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

**OC: 11/27/11
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit
Section 96.5-1-j – Separation from Temporary Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated December 27, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 9, 2012. The claimant participated. The employer participated by Holly Carter, unemployment specialist, and Mary Longbine, human resources coordinator. The record consists of the testimony of Samuel Nino; the testimony of Holly Carter; the testimony of Mary Longbine; Claimant's Exhibit A; and Employer's Exhibits 1 through 3

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a temporary staffing agency. The claimant comes to Iowa from Texas in June and stays through November. He works for Syngenta Seeds, which is a client of the employer. The claimant started on June 14, 2011. The claimant was a maintenance worker. The production season came to an end on November 2, 2011. On November 3, 2011, the claimant placed a call to Mary Longbine, requesting a new assignment. He needed to earn some more money and wanted to stay in Iowa to work. Ms. Longbine did not return the claimant's call.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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 section 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 section 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 this case established that the claimant's assignment came to an end on November 2, 2011. The claimant wanted to stay in Iowa to earn some more money before returning to Texas. His phone records show that he placed a called to Mary Longbine on November 3, 2011. The claimant testified he told Ms. Longbine that he wanted a new assignment. Ms. Longbine does not recall receiving the voice mail message.

The administrative law judge concludes that the claimant's testimony that he called Ms. Longbine to ask for another assignment is credible, particularly since he has a phone record to prove he made the call. The claimant called within three working days of the end of his assignment. He is not a voluntary quit. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated December 27, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw