

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARLENE J BROWN
Claimant

APPEAL NO. 10A-UI-08469-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 05/09/10
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer, Advance Services, filed an appeal from a decision dated June 9, 2010, reference 01. The decision allowed benefits to the claimant, Marlene Brown. After due notice was issued a hearing was held by telephone conference call on July 30, 2010.

The claimant provided a telephone number to the Appeals Section. That number was dialed at 8:59 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless she contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 9:10 a.m. the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The employer participated by Unemployment Specialist Scott McKenzie. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Marlene Brown was employed by Advance Services from September 22, 2009 until February 15, 2010. At the time of hire the claimant received at least three different pieces of paper setting out the employer's requirement that an employee must contact the office within three working days of the end of any assignment to request more work. The policy further states failure to do so will be considered a voluntary quit.

Ms. Brown was assigned to only one client company during the course of her employment. That assignment ended February 10, 2010, at the request of the client company. She did not contact Advance Services after she was notified of the end of the assignment and was considered a voluntary quit as of February 15, 2010.

Marlene Brown has received unemployment benefits since filing a claim with an effective date of May 9, 2010.

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.

The claimant had been advised of her obligation to notify the employer within three working days of the end of each assignment. Her failure to do so is considered a voluntary quit by the employer and is a disqualifying separation under the provisions of the above Code section.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the

overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of June 9, 2010, reference 01, is reversed. Marlene Brown is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs