

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PEDRO GARZA
Claimant

ADVANCE SERVICES INC
Employer

APPEAL NO. 20A-UI-00384-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/15/19
Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Layoff
Iowa Admin. Code r. 871-24.26(19) – Fulfillment of the Contract of Hire
Iowa Code Section 96.5(1)(j) – Separation from Temporary Employment

STATEMENT OF THE CASE:

Pedro Garza filed a timely appeal from the January 6, 2020, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Garza voluntarily quit on December 18, 2019 without good cause attributable to the employer. Mr. Garza requested an in-person hearing. After due notice was issued, an in-person hearing was held in Des Moines on January 29, 2020. Mr. Garza participated and presented additional testimony through Julia Celedon. The employer did not participate. The employer registered a telephone number for the hearing and named Melissa Lewien as the employer's representative for the hearing. The administrative law judge granted Ms. Lewien's request to participate by telephone. However, at the time of the hearing, Ms. Lewien was not available at the number the employer had registered for the hearing. No one appeared in-person on behalf of the employer for the in-person hearing. The hearing in this matter was consolidated with the hearing in Appeal Number 20A-UI-00383-JT, concerning claimant Julia Celedon and the same employer. Exhibits A and B were received into evidence.

ISSUES:

Whether Mr. Garza's December 2019 separation from the temporary employment agency was for good cause attributable to the employer.

Whether Mr. Garza was laid off.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Advance Services, Inc. (ASI) is a temporary employment agency. Pedro Garza was most recently employed by ASI in a full-time, temporary work assignment at the Bayer corn research enterprise in Huxley, Iowa. Mr. Garza's duties included assisting with counting corn, planting corn, and harvesting corn. Mr. Garza's common law spouse, Julia Celedon, was also employed by ASI and performed the same or similar work at Bayer during the same period. The work

days were Monday through Friday during the counting season and Monday through Saturday during the planting season and harvest season. Mr. Garza began the most recent assignment in January 2019 and completed the assignment on Friday, December 13, 2019. On or about December 11, 2019, the Bayer supervisor notified Mr. Garza that the assignment would end on December 13, 2019. At the time the assignment ended, Mr. Garza had performed all the work that ASI and Bayer had for him in the assignment. ASI had not had Mr. Garza sign a policy that would obligate him to contact ASI upon completion of an assignment to request a new assignment. However, on December 18, 2019, Mr. Garcia contacted an ASI representative in Nebraska to give notice that his assignment and Ms. Celedon's assignment had ended. The ASI representative advised Mr. Garza there was no need to contact ASI.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See Iowa Administrative Code rule 871-24.25.

Iowa Code section 96.5(1)(j) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(19) provides, in relevant part, as follows:

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 evidence in the record establishes a December 13, 2019 layoff from the Bayer assignment and a December 13, 2019 separation from ASI that was for good cause attributable to the employer. The employer did not participate in the appeal hearing and did not present any evidence to prove that the employer complied with the notice requirements set forth at Iowa Code Section 96.5(1)(j). The evidence in the record establishes that the employer had not notified Mr. Garza that he was obligated to contact ASI within three working days of the end of an assignment to request a new assignment or be deemed to have voluntarily quit and risk being disqualified for unemployment insurance benefits. Accordingly, Iowa Code Section 96.5(1)(j) does not apply and cannot serve as the basis for disqualifying Mr. Garza for unemployment insurance benefits. The Bayer assignment ended and the employment separation occurred when Mr. Garza completed all the work that ASI and Bayer had for him in the temporary assignment. By completing the assignment Mr. Garza fulfilled the contract of hire. Mr. Garza was under no obligation to seek a further assignment through ASI. Mr. Garza is eligible for benefits provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The January 6, 2020, reference 01, decision is reversed. On December 13, 2019, the claimant was laid off from the temporary work assignment and separated from the temporary employment firm for good cause attributable to the employer. The claimant is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn