

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**TWILA M HOPKINS
707 VICTORIA ST
HARLAN IA 51537-1639**

**ADVANCE SERVICES INC
c/o TALX UCM SERVICES INC
PO BOX 66864
ST LOUIS MO 63166-6864**

**Appeal Number: 06A-UI-03305-JTT
OC: 02/26/06 R: 01
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) - Voluntary Quit
Section 96.5(1)(j) - Temporary Employment

STATEMENT OF THE CASE:

Claimant Twila Hopkins filed a timely appeal from the March 16, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 10, 2006. Claimant participated. Human Resources Office Manager Mary Murtaugh represented the employer. Exhibits One through Four were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Twila Hopkins was employed by Advance Services temporary employment agency on a full-time basis through February 28, 2006, when she ceased reporting to her assignment or maintaining contact with the client business or the temporary employment agency.

Ms. Hopkins was assigned to work at Shelby County Cookers. Ms. Hopkins last appeared and worked a shift on February 16, 2006. Ms. Hopkins was then absent with the employer's approval through Monday, February 20, in connection with a funeral. On February 21, after the scheduled start of her shift, Ms. Hopkins contacted the employer to advise that she was in Nebraska and in the process of returning to Iowa after having transported a relative to Oklahoma after the funeral. The employer agreed to extend Ms. Hopkins' bereavement leave an additional day. On February 22-23, Ms. Hopkins was absent due to the illness of one of her children. Ms. Hopkins notified the employer on February 22, after the scheduled start of her shift and after she had taken the child to the doctor. Ms. Hopkins was not scheduled to work again until February 27. On February 27, Ms. Hopkins was absent because she had to take a one of her children to the emergency room. At this point, Ms. Hopkins concluded that she had accrued too many attendance points and would be subject to discharge from the employment. The employer had not notified Ms. Hopkins that she was subject to any disciplinary action, let alone discharge from the employment. The employer continued to have work available to Ms. Hopkins, but Ms. Hopkins neither reported for work nor made further contact with the Shelby County Cookers or Advance Services.

After Ms. Hopkins had been absent for three consecutive shifts without notifying the employer, Plant Manager Vic Lovejoy concluded that Ms. Hopkins had abandoned the employment. The three shifts at issue were on February 28 and March 1-2. The Shelby County Cookers' written attendance policy deems a single "no-call, no-show" absence a voluntary quit.

Though Shelby County Cookers was the only client business with which the Harlan branch of Advance Services contracted to provide "temporary" workers, Advance Services' written policy nevertheless required Ms. Hopkins to notify Advance Services within three working days of the completion of an assignment. This requirement was set forth in both the contract of hire and a separate document dealing only with the assignment policy. Ms. Hopkins signed both documents on January 13, 2005.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the evidence in the record establishes that Ms. Hopkins' voluntary quit of the assignment was for good cause attributable to the employer. It does not.

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 24.25(4) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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).

The evidence in the record indicates that Ms. Hopkins quit the temporary employment assignment by simply ceasing to appear for work on or after February 28, 2006. Though the attendance policy applicable to the assignment at Shelby County Cookers deemed a single "no-call, no-show" absence a voluntary quit, the plant manager waited until Ms. Hopkins had missed three consecutive shifts without notifying the employer to conclude that Ms. Hopkins had voluntarily quit the employment. Under such circumstances, Ms. Hopkins is presumed to have voluntarily quit the employment without good cause attributable to the employer. See 871 IAC 24.25(4). Ms. Hopkins' continued failure to return to the assignment or contact Shelby County Cookers or Advance Services further indicates a voluntary quit of the assignment without good cause attributable to the employer.

As a practical matter, when Ms. Hopkins' assignment at Shelby County Cookers ended, her employment relationship with the Harlan branch of Advance Services ended as well.

Nonetheless, the administrative law judge will address the issue of whether the evidence in the record indicates that Ms. Hopkins' separation from the temporary employment agency was for good cause attributable to the agency. It does not.

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 purpose of the statute is to provide notice to the temporary employment agency that the claimant is available for work at the conclusion of the temporary assignment. The evidence in the record indicates that Advance Services had a written notification policy that complied with the requirements of Iowa Code Section 96.5(1)(j) and had appropriately placed Ms. Hopkins on notice of the requirement that she contact the temporary employment agency within three working days of the completion of an assignment. Ms. Hopkins failed to contact Advance Services within the required time.

Based on the evidence in the record and application of appropriate law, the administrative law judge concludes that Ms. Hopkins voluntarily quit the assignment without good cause attributable to Shelby County Cookers and voluntarily separated from the employment relationship with Advanced Services without good cause attributable to the client business or the temporary employment agency. For each of these reasons, Ms. Hopkins is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Hopkins.

DECISION:

The Agency representative's decision dated March 16, 2006, reference 01, is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

jt/tjc