

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ANTONIO PADILLA**  
Claimant

**ADVANCE SERVICES INC**  
Employer

**APPEAL 18A-UI-11079-LJ**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/01/18**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 8, 2018, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit his temporary employment. The parties were properly notified of the hearing. An in-person hearing was held in Des Moines, Iowa, on Friday, December 28, 2018. The claimant, Antonio Padilla, participated and was represented by Philip F. Miller, Attorney at Law. The employer, Advance Services, Inc., participated through Melissa Lewien, Risk Management; and Laura Martinez, Human Resources Coordinator. Claimant presented testimony from the employer's witnesses during its direct case at the outset of the hearing. Spanish/English interpreter Dan Dular from International Translation Service, L.L.C., provided interpretation services for the hearing. Claimant's Exhibits A and B and Employer's Exhibits 1, 2, and 3 were received and admitted into the record without objection. The administrative law judge took official notice of the fact-finding documentation. Claimant's motion to declare Melissa Lewien as a hostile witness was denied. Claimant's motion for a mistrial was denied. Claimant's request for the administrative law judge to order the employer to turn over email documentation was denied.

**ISSUE:**

Did claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a laborer assigned to Pioneer, from August 23, 2018, until October 19, 2018, when his assignment ended at Pioneer. On October 19, Laura Martinez told claimant that the work was finished. Claimant did not ask Martinez for a new assignment.

When claimant was hired, he electronically signed a copy of a policy stating he knew it was his responsibility to contact the employer within three working days of his assignment ending or he would be considered to have quit voluntarily ("Three-Day Policy"). (Exhibit 2) The employer has the Three-Day Policy available in English and in Spanish. (Exhibits 2 and 3) Claimant

received a printed-out copy of the Three-Day Policy as part of a package of all the employer's policies that Martinez gave him. The employer does not verbally instruct employees on the Three-Day Policy.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant's separation was without good cause attributable to the employer. Benefits are withheld.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's testimony and documentation credible.

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. (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 lettered 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.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The plain language of the statute allows benefits for a claimant "who notifies the temporary employment firm of completion of an assignment *and* who seeks reassignment." (Emphasis supplied.)

In this case, the employer had notice of the claimant's availability because it notified him of the end of the assignment but he did not request another assignment. The administrative law judge finds that claimant received and signed a copy of the employer's policy requiring him to request a new assignment within three working days of completing his assignment at Pioneer. Therefore, he is considered to have quit the employment without good cause attributable to the employer.

**DECISION:**

The November 8, 2018, (reference 02) unemployment insurance decision is affirmed. Claimant separated from employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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