

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRENT E PINGEL

Claimant

APPEAL 17A-UI-06065-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 05/22/16

Claimant: Appellant (2R)

Iowa Code § 96.5(1) – Voluntary Quitting

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

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 1, 2017 (reference 03) unemployment insurance decision that denied benefits based upon his voluntary quit from employment by failing to notify the temporary employment firm within three working days of the completion of his last work assignment. The parties were properly notified of the hearing. A telephone hearing was held on June 28, 2017. The claimant, Brent Pingel, participated personally and was represented by Attorney Alyssa Herbold. The employer, Advance Services Inc., participated through witness Steve Volle. Claimant's Exhibits A and B were admitted. Employer's Exhibits 1 and 2 were admitted.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?

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

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was a temporary employee of a temporary employment firm. Claimant began his employment on September 23, 2016. On September 23, 2016, the claimant completed paperwork with the employer, including signing the employer's end of assignment policy. See Exhibit 1. A copy of this policy was provided to claimant. The end of assignment policy provides that the claimant understands that it is his responsibility to contact Advance Services, Inc. within three working days after his assignment ends to request further assignments or he will be considered to have voluntarily quit.

Claimant received his job assignment from the employer to work full-time at Pioneer. See Exhibit A. This job assignment began on September 23, 2016 and ended on May 5, 2017. The reason the job assignment ended was due to Pioneer's lack of production. After the assignment ended, the claimant reported to the employer on May 8, 2017, which was within three working days.

During this meeting on May 8, 2017, Jenna (an employee with Advance Services Inc.) told claimant about a job located in Paulina, Iowa. No other job assignments were offered to him during this meeting. Claimant told Jenna that Paulina, Iowa was too far of a drive for him since it was approximately sixty miles round trip. See Exhibit B. Claimant expressed to Jenna that he had the opportunity for some part-time work for a nearby farmer during planting season. By offering him a job in Paulina, Iowa, it is clear that Jenna believed that claimant was reporting on May 8, 2017 for additional work assignments.

The following day, May 9, 2017, Jenna telephoned claimant and told him that she had a referral to a job in Paulina, Iowa. See Exhibit B. Claimant told Jenna that Paulina, Iowa was too far of a drive for him and that he had the opportunity for some part-time work for a nearby farmer. Claimant never stated that he would not work at assignments that were available and near his home.

Claimant did work for a farmer named David Dean and was paid for his work sometime after May 9, 2017. Claimant no longer works for Mr. Dean. Claimant's wages were not reported on his weekly claims for filing benefits.

The issue of whether claimant properly reported wages received during his employment with Mr. Dean shall be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

The issue of whether the claimant's separation from employment from Mr. Dean disqualifies him from receipt of unemployment insurance benefits shall be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

The issue of whether the claimant was able to and available for work effective May 9, 2017 shall be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

The issues of whether the claimant refused a suitable offer of work on May 8, 2017 and on May 9, 2017 shall be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination with notice provided to both claimant and employer Advance Services Inc.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the separation is not disqualifying. Benefits are allowed, provided claimant is otherwise eligible.

Iowa Code § 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 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."

In this case, the employer had notice of the claimant's availability because claimant reported to the employer on May 8, 2017 for reassignment. Claimant was unwilling to work at the job assignment that was offered to him in Paulina, Iowa. This does not mean that claimant was unwilling to work at a job that would have been located near his home if one was offered to him. Claimant contacted the employer within three working days of the notification of the end of the assignment and requested reassignment. The claimant complied with Iowa Code section 96.5(1)j and he did not voluntarily quit without good cause attributable to the employer. The separation is not disqualifying. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The June 1, 2017 (reference 03) unemployment insurance decision is reversed. The claimant's separation from employment was not disqualifying. Benefits are allowed, provided he is otherwise eligible.

REMAND:

The issue of whether claimant properly reported wages received during his employment with Mr. Dean shall be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination. The issue of whether the claimant's separation from employment from Mr. Dean disqualifies him from receipt of unemployment insurance benefits shall be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination. The issue of whether the claimant was able to and available for work effective May 9, 2017 shall be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination. The issues of whether the claimant refused a suitable offer of work on May 8, 2017 and on May 9, 2017 shall be remanded to the

Benefits Bureau of Iowa Workforce Development for an initial investigation and determination with notice provided to both claimant and employer Advance Services Inc.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs