

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA A WHELAN
Claimant

APPEAL NO. 14A-UI-01008-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 12/29/13
Claimant: Appellant (1)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

STATEMENT OF THE CASE:

Laura Whelan filed a timely appeal from the January 22, 2014, reference 02, decision that denied benefits in connection with a January 10, 2014 separation from Advance Services, Inc. After due notice was issued, a hearing was held on February 18, 2014. Ms. Whelan participated. Michael Payne represented the employer and presented additional testimony through Candi Ashman. Exhibits One, Two and A were received into evidence.

ISSUE:

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

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. In April 2013, Laura Whelan started a full-time temporary work assignment at Pella Corporation. Ms. Whelan completed the work assignment on Friday, January 10, 2014. Ms. Whelan's regular work hours were 7:00 a.m. to 3:00 to 3:30 p.m., Monday through Friday. Ms. Whelan had advance warning that the assignment was going to come to an end on January 10, 2014.

Wednesday, January 15, 2014, was the third working day after the assignment ended. Ms. Whelan waited until 8:37 p.m., *after ASI's office had closed for the day*, to telephone ASI and leave a voicemail message on the agency's answering machine. Ms. Whelan identified herself. Ms. Whelan said she was "checking in." Ms. Whelan left a phone number.

Ms. Whelan next made contact with the employer on January 28, 2014, when she went to the employer's office to ask whether any jobs were available.

The employer has an end-of-assignment notification policy that obligated Ms. Whelan to contact the employer "within three working days" of the end of an assignment to request a new assignment. The policy contained a clear and concise statement of that requirement and of the impact on unemployment insurance benefit eligibility if the claimant failed to make such contact.

The policy was a stand-alone policy. The employer had Ms. Whelan sign the policy statement and provided Ms. Whelan with a copy of the policy.

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.

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 employer's end of assignment notice policy complies with the requirements of Iowa Code section 96.5(1)(j). The employer provided Ms. Whelan with appropriate notice of the policy. Ms. Whelan waited to contact the employer until after the employer's office was closed for business on the third working day after her assignment ended. Ms. Whelan knew on or before January 10, 2014 that her assignment was ending that day. Ms. Whelan had the ability to contact the employer in a timely manner, *within three working days* of the end of her assignment, but did not do so. Ms. Whelan's decision to wait to call the employer until after the close of business on the third working day following her assignment was untimely contact under the statute and caused her separation to not be for good cause attributable to the employer pursuant to the governing statute.

Ms. Whelan's brief message, "I'm checking in," stands in stark contrast to her more meaningful contact with the employer on January 28, 2013. However, the employer had not directed Ms. Whelan to request additional work through any specific words and the law does not require particular words. A reasonable person listening to Ms. Whelan's message would understand the message to be an inquiry about additional work.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Whelan's separation from the temporary employment agency was without good cause attributable to the temporary employment agency because her initial contact with the employer after completing her assignment was untimely. Ms. Whelan is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amounts.

DECISION:

The Agency representative's January 22, 2014, reference 02, decision is affirmed. The claimant's January 10, 2014, separation from the temporary employment agency was without good cause attributable to the temporary employment agency. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amounts.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs