

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MICHAEL B OWEN
Claimant

ADVANCE SERVICES INC
Employer

APPEAL NO. 19A-UI-10142-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/10/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Michael Owen filed a timely appeal from the December 13, 2019, reference 03, decision that disqualified him for benefits and that held the employer's account would not be charged, based on the deputy's conclusion that Mr. Owen voluntarily quit the employment on November 7, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 17, 2020. Mr. Owen participated. The employer did not comply with the hearing notice instructions to register a telephone number for the appeal hearing, did not otherwise provide the Appeals Bureau with a telephone number for the hearing, and did not participate in the appeal hearing. The hearing in this matter was consolidated with the hearing in Appeal Number 19A-UI-10143-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant (DBRO).

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 whose clients include a Syngenta facility in Slater, Iowa. Michael Owen (claimant) began a full-time, temporary work assignment at Syngenta in February 2019 and last performed work in the assignment on November 8, 2019. At the time Mr. Owen began the assignment, the assignment was expected to end on November 18, 2019. Mr. Owen then commenced an approved period of vacation. Mr. Owen was scheduled to return to work at the assignment on Monday, November 18, 2019. On November 13, 2019, Mr. Owen was in the state of Washington when he received a telephone call from ASI's onsite representative Imelda Lozano to say that the assignment would end on November 18, 2019. Ms. Lozano told Mr. Owen that she did not need him to return for the last day of the assignment. Based on Ms. Lozano's statement, Mr. Owen did not report for work on November 18, 2019. On November 19, 2019, Mr. Owen returned his Syngenta ID badge to Ms. Lozano. At that time, Mr. Owen asked whether there were other available assignments and

Ms. Lozano indicated there were no other assignments available. Mr. Owen cannot recall whether ASI had him sign an end-of-assignment policy that would require him to contact ASI at the completion of an assignment to request a new assignment.

REASONING AND CONCLUSIONS OF LAW:

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) and (22) provide, 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. ...

...
24.26(22) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed.

The evidence in the record establishes a November 18, 2019 separation that was for good cause attributable to the employer. The employer did not participate in the appeal hearing and presented no evidence to rebut Mr. Owen's testimony. Mr. Owen completed the Syngenta assignment effective November 18, 2019, based on the client business's decision to end the assignment that day. At the time Mr. Owen learned that the assignment was coming to an end, he was on an approved period of vacation. Mr. Owen had planned to return for the last day of the assignment. But for Ms. Lozano guidance that Mr. Owen did not need to appear on November 18, 2019, Mr. Owen would have appeared for work on that date. Mr. Owen reasonably relied upon the ASI representative's guidance. One day after the assignment concluded, Mr. Owen spoke with the ASI representative and requested another assignment. The employer presented no evidence to prove that the employer had given the statutorily-mandated written notice to Mr. Owen regarding the need to contact the employer within three days of completing an assignment to request a new one or be deemed to have voluntarily quit and risk being disqualified for unemployment insurance benefits. Accordingly, Mr. Owen fulfilled the contract hire when the assignment was completed. Regardless of whether Iowa Code section 96.5(1)(j) applies to the temporary employment relationship, Mr. Owen was in contact with the employer the day after the assignment concluded to request a new assignment. Mr. Owen is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

DECISION:

The December 13, 2019, reference 03, decision is reversed. The claimant's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The separation was effective November 18, 2019. 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