

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OMAR C COLUNGA
Claimant

APPEAL NO. 12A-EUCU-00243-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 03/08/09
Claimant: Respondent (4)

Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 3, 2012, reference 08, decision that allowed benefits and that held the employer's account could be charged. After due notice was issued, a hearing was held on January 8, 2013. Claimant Omar Colunga did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Michael Payne, Loss Prevention Specialist, represented the employer.

ISSUES:

Whether Mr. Colunga separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

Whether Advance Services' account may be charged for benefits paid the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Omar Colunga performed work for the employer in a single full-time temporary work assignment at Mycogen Seeds in Marshalltown. The assignment started on August 28, 2012 and ended on October 1, 2012, when Mr. Colunga completed the assignment. Prior to completion of the assignment at Mycogen Seeds the employer facilitated Mr. Colunga being hired for a permanent position with Road Safe Traffic Systems. Mr. Colunga had accepted the new position prior to the Mycogen Seeds assignment coming to an end. Mr. Colunga started the new position with Road Safe Traffic Systems on October 2, 2012. At that point, Mr. Colunga was an employee only of Road Safe Traffic Systems and Advance Services had no further involvement.

REASONING AND CONCLUSIONS OF LAW:

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). 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. See 871 IAC 24.25.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, *and the individual performed services in the new employment*. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

[Emphasis added.]

The weight of the evidence establishes that Mr. Colunga voluntarily separated from the employment with Advance Services on October 1, 2012 for the purpose of accepting new, permanent employment with Road Safe Traffic Systems. Mr. Colunga did indeed start with the new employer the day after he separated from Advance Services. The separation was without good cause attributable to Advance Services. That company's account will not be charged for benefits. The separation from Advances Services did not disqualify Mr. Colunga for unemployment insurance benefits. Mr. Colunga is eligible for benefits provided he meets all other eligibility requirements.

DECISION:

The Agency representative's December 3, 2012, reference 08, decision is modified as follows. The claimant separated from the employment without good cause attributable to the employer to begin other employment. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/tll