

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDI SHIRK
Claimant

APPEAL NO: 14A-UI-01382-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 01/12/14
Claimant: Respondent (1)

Section 96.5(1) – Voluntary Leaving
871 IAC 24.26(19 & 22) – Voluntary Leaving
Section 96.5-1-j – Reassignment from Employer

STATEMENT OF CASE:

The employer filed a timely appeal from the February 5, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 27, 2014. The claimant participated in the hearing. Candy Ashman, Office Manager and Michael Payne, Risk Management, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left her employment and whether she sought reassignment from the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general laborer for Advance Services last assigned to Pella Corporation from April 1, 2013 to January 10, 2014. The claimant's assignment ended due to a lack of work January 10, 2014.

During a December 2013 meeting with employees, the employer notified them their assignments with Pella Corporation would end January 3 or January 10, 2014 but they would likely be recalled in March 2014. Employees were not instructed to contact the employer if they wished to accept other assignments between the date of the layoff/completion of their assignment and the date of the recall. The claimant's last day was January 10, 2014. At 11:00 a.m. on January 13, 2014, the claimant contacted the employer and asked for another assignment and if she needed to continue calling the employer about further assignments. Office Manager Candy Ashman asked the claimant if she wanted to return to Pella Corporation and the claimant indicated she did and Ms. Ashman told her that in that case she did not have to call the employer again until mid-March 2014. The claimant clarified the situation with Ms. Ashman because the previous year, after working a temporary assignment at Pella Corporation for another company she had been instructed to call the employment agency every

week even though she planned to return to Pella Corporation in the Spring and Ms. Ashman responded that she did not understand why the previous company would have her do that. Consequently, the claimant did not continue calling weekly.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was not disqualifying.

Iowa Code section 96.5-1 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.

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.

The claimant called the employer on the third day after the completion of her assignment to ask if she needed to continue calling for additional work. Her call met the initial employer requirement about notifying it of the end of her assignment even though the employer had already informed her that the assignment was ending, not the client. The employer was well aware the assignment was ending. Rather than answering the claimant's question about whether she needed to continue to call in for work with a yes or no, Ms. Ashman asked her if she wanted to return to work at Pella Corporation in the Spring of 2014 and the claimant answered affirmatively. Ms. Ashman then told the claimant she did not have to call in weekly, which directly resulted in the claimant violating the employer's policy regarding calling in each week an employee is without an assignment to seek other employment. But for Ms. Ashman steering the conversation toward the claimant returning to work at Pella, the claimant would have sought reassignment on a weekly basis from the employer. Instead, the claimant relied on incorrect information from Ms. Ashman in failing to call in each week. Under these circumstances, the administrative law judge must conclude benefits must be allowed.

DECISION:

The February 5, 2014, reference 01, decision is affirmed. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css