

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ORLANDA MIRANDA DIAZ
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 20A-UI-01455-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/19/20
Claimant: Respondent (2)

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On February 18, 2020, Advance Services, Inc. (employer) filed an appeal from the February 13, 2020, reference 02, unemployment insurance decision that allowed benefits based upon the determination Orlanda Miranda Diaz (claimant) completed his job assignment but had not been told in writing that he needed to request another job assignment. The parties were properly notified about the hearing. A telephone hearing was held on March 5, 2020. The claimant did not respond to the hearing notice and did not participate. The employer participated through Melissa Lewein, Risk Manager, and Yanira Mauricio, Human Resource Coordinator. The Employer's Exhibit 1 was admitted into the record. The administrative law judge took official notice of the claimant's claim history.

ISSUES:

Did the claimant quit by not reporting or requesting additional work assignments within three business days of the end of the last assignment?

Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and charged to the employer's account?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was temporarily employed full-time as a Welder with the employer's client Midwest Industries beginning on October 2, 2019, and his last day worked was January 21, 2020. The employer has a policy written in both English and Spanish that notifies employees they must request a new assignment within three days of the end of the prior assignment or they will be deemed to have voluntarily quit employment. The claimant signed and received a copy of the Spanish version of the policy.

On January 21, Yanira Mauricio, Human Resource Coordinator, met with the claimant to tell him the client ended his assignment due to attendance issues. The claimant told her he was going

to file for unemployment insurance benefits because he did not agree with the decision to end the assignment. He did not request another assignment within three days of that conversation.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$880.00, since filing a claim with an effective date of January 19, 2020 and reopen date of February 2, 2020, for the four weeks ending February 29. Melissa Lewein, Risk Manager, participated in the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

I. Did the claimant quit by not reporting or requesting additional work assignments within three business days of the end of the last assignment?

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer. Benefits are denied.

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.

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." (Emphasis supplied.)

In this case, the employer notified the claimant, in writing, of his obligation to contact the employer and request additional work at the end of an assignment. The employer notified the claimant of the end of his assignment and knew it had ended. However, the claimant disagreed with the decision to end the assignment and, as a result, he did not request another assignment. The claimant failed to notify the employer he was available for additional work within three days of the end of the assignment. Therefore, he is considered to have quit the employment without good cause attributable to the employer.

II. Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and charged to the employer's account?

For the reason that follow, the administrative law judge further concludes that the claimant has been overpaid unemployment insurance benefits which he is obligated to repay because the employer participated in the fact-finding interview and its account shall not be charged.

Iowa Code section 96.3(7)a, b, as amended in 2008, provides:

Payment – determination – duration – child support intercept.

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Iowa Admin. Code r. 871-24.10(1) provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871-subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

Because the claimant's separation was disqualifying, benefits were paid to which he was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award

benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview.

In this case, the claimant received benefits but was not eligible for those benefits. The employer participated in the fact-finding interview via live testimony. Since the employer participated in the fact-finding interview, the claimant is obligated to repay to the agency the benefits he received and the employer's account shall not be charged.

DECISION:

The February 13, 2020, reference 02, unemployment insurance decision is reversed. The claimant's separation was not attributable to the employer. Benefits are withheld until such time as he works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

The claimant has been overpaid unemployment insurance benefits in the amount of \$880.00 and is obligated to repay the agency those benefits. The employer participated in the fact-finding interview and its account shall not be charged.



Stephanie R. Callahan
Administrative Law Judge

March 10, 2020
Decision Dated and Mailed

src/scn