

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICK L COLEMAN**

Claimant

**APPEAL NO. 14A-UI-00902-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**

Employer

**OC: 12/22/13**

**Claimant: Respondent (2R)**

Section 96.5-1 – Voluntary Quit

Section 96.3-7 – Recovery of Overpayment of Benefits, Employer Chargeability for non participation at Fact Finding

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated January 22, 2014, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 17, 2014. Claimant participated. Employer participated by Michael Payne, Manager. Exhibits One and Two were admitted into evidence.

**ISSUE:**

The issues in this matter are whether the claimant quit for good cause attributable to the employer, whether claimant is overpaid unemployment insurance benefits and whether employer's account is charged due to non participation at fact finding.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 20, 2013. Claimant completed his assignment. Claimant did not contact employer to ask for further assignment until February 14, 2014. Employer's written policy dictates that claimant must contact employer and ask for another job within three days of the end of an assignment. Claimant was informed of the policy.

Employer did participate at the fact-finding interview. Employer provided the same evidence at fact finding as in the appeal hearing. Employer's representative was not a first-hand witness. Employer's witness is credible. Employer did present sufficient evidence at fact finding that if un rebutted would have allowed employer to win.

There is no evidence that proves claimant received benefits due to fraud or willful misrepresentation.

## REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to the employer when claimant terminated the employment relationship because he completed his assignment without asking for more work. Claimant, by employer policy was obligated to ask for another job within three days. Claimant failed to ask for another job and as such quit without good cause. Benefits withheld.

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 next issue concerns an overpayment of unemployment insurance benefits and charges to employer's account.

Fraud or willful misrepresentation by the claimant means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment benefits. See 871 IAC 24.10(4).

Employer participation would include testimony from a firsthand witness or the name and number of a firsthand witness who may be contacted for rebuttal. It could also include a detailed written statement or documents that provide specific, factual information regarding the separation. At a minimum, the employer's information regarding a discharge must include the dates, particular circumstances and the act or omissions of the claimant. A voluntary separation should include the stated reason for the quit. See 871 IAC 24.10(1)

Statements or general conclusions without supporting detailed factual information and/or information submitted after the fact-finding interview are not considered participation within the meaning of the statute. See 871 IAC 24.10(1)

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

This matter is remanded to the claims section for determination of claimant's overpayment. Claimant's overpayment is not waived because employer participated at fact finding with a live witness and if unrefuted employer would have prevailed.

Employer's account shall not be charged because employer did meaningfully participate at fact finding.

**DECISION:**

The decision of the representative dated January 22, 2014, reference 02, is reversed and remanded for determination of claimant's overpayment. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. Employer's account shall not be charged.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/pjs