

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ISMAEL SALDANA**  
Claimant

**APPEAL NO. 13A-UI-12910-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**  
Employer

**OC: 10/20/13**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(1)j – Voluntary Leaving (Temporary Assignment)  
Iowa Code § 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 20, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 1, 2013. The claimant did participate with the assistance of interpreter Ike Rocha. The employer did participate through Michael Payne. Employer's Exhibit One was entered and received into the record.

**ISSUES:**

The issue is whether claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment.

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was last assigned at Syngenta in Lone Tree Iowa as a driver full time from September 16, 2013, to October 21, 2013. After the assignment ended, the claimant failed to report to the employer within three working days as required by written policy. The employer has a computer program that specifically records when any client returns seeking additional work. The claimant did not go back to the employer to seek additional work until October 28. The claimant contends he sought work on October 21, 22 and 23 and then moved to Texas on October 23. The employer's records are more believable in that they regularly and routinely keep track of clients seeking work. The claimant told the fact-finder that he did not seek additional work because he was moving to Texas. The claimant had been given the notice in writing that he was required to seek reassignment within three working days after the end of an assignment. He did not do so.

While he was awarded benefits by the fact-finder he has not claimed nor been paid any benefits thus, the issue of overpayment is moot.

### **REASONING AND CONCLUSIONS OF LAW:**

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

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.

871 IAC 24.26(19) provides:

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. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

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. In this case, the claimant gave the employer no notice of his availability and, therefore, is considered to have quit the employment, even though claimant may have returned to work for the temporary agency at some later date. The claimant did not seek reassignment from the employer within three working days of the end of his assignment. Benefits are denied.

**DECISION:**

The November 20, 2013 (reference 01) decision is reversed. The claimant's separation was not attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs