

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RHONDA S RIVAS
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 19A-UI-09709-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/10/19
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1)j – Temporary employment firm

STATEMENT OF THE CASE:

On December 9, 2019, Rhonda Rivas (claimant) filed a timely appeal from the December 6, 2019 (reference 05) unemployment insurance decision that found claimant was not eligible for benefits.

A telephone hearing was held on January 7, 2020. The parties were properly notified of the hearing. The claimant participated personally. Advance Services Inc. (employer) registered a number for the hearing. However, when reached by the administrative law judge, Risk Manager Melissa Lewien informed the judge the employer would not be participating in the hearing.

Claimant's Exhibits 1 and 2 were admitted.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Did the claimant make a timely request for another job assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a temporary employee. Claimant's first day of employment was August 16, 2019. Claimant began her most recent assignment on September 5, 2019. The assignment was at Pioneer. The last day claimant worked at that assignment was Friday, November 8, 2019.

Toward the end of claimant's last day at Pioneer, Recruiter Laura Martinez informed claimant and others who were assigned there that the assignment was ending at the end of that day. Also on that day, Martinez gave claimant and others a copy of employer's assignment policy. When Martinez gave claimant and others the policy, she instructed them to call her on Wednesday,

November 13, for further assignment. This would give her three days to try to find them other assignments.

Employer's assignment policy states that employees must contact employer within three working days of the end of an assignment to request further assignments. Failure to do so will be considered a voluntary quit. Claimant signed for and received a copy of this policy on August 16, 2019. See Exhibit 1.

Claimant called Martinez as directed on November 13, 2019. See Exhibit 2. Martinez did not answer and claimant left a message, stating she was calling in as directed and asking if there was employment available. Martinez called claimant back shortly thereafter through Facebook. Martinez informed claimant no work was currently available but that she would also register claimant for work in Grinnell.

Claimant has since reached out to Martinez for work but has not received an assignment. Martinez has told claimant she will let her know when an assignment is available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the December 6, 2019 (reference 05) unemployment insurance decision that found claimant was not eligible for benefits is REVERSED. Claimant is eligible for benefits, so long as she meets all other eligibility requirements.

Iowa Code section 96.5(1)a 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.

Iowa Admin. Code r. 871-24.26(15) provides:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual has good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently acceptable means of communications. Working days means the normal days in which the employer is open for business.

Claimant was employed by employer as a temporary employee. Her recruiter, Martinez, informed her at the end of the day on Friday, November 8, 2019, that her assignment was ending. Claimant followed Martinez's direction and complied with employer's assignment policy by contacting Martinez for further assignment on Wednesday, November 13, 2019, within three working days of the end of the assignment. Claimant has since remained in contact with Martinez for additional assignments. Claimant did not voluntarily quit.

Because claimant did not voluntarily quit, the separation must be analyzed as a discharge for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

- a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32 provides in relevant part:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). In fact, the record is devoid of evidence showing claimant committed any misconduct.

DECISION:

The December 6, 2019 (reference 05) unemployment insurance decision is REVERSED. Claimant is eligible for benefits, so long as she meets all other eligibility requirements.

Andrew B. Duffelmeyer
Administrative Law Judge
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Decision Dated and Mailed

abd/scn