

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RICHARD E MUSUMHI**  
Claimant

**APPEAL 17A-UI-11556-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**  
Employer

**OC: 05/14/17  
Claimant: Appellant (2)**

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Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 6, 2017, (reference 08) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 4, 2017. Claimant participated. Employer participated through risk manager Melissa Lewin. Claimant Exhibit A was admitted into evidence with no objection. Employer Exhibit 1 was admitted into evidence with no objection.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed in a temporary position, full-time as a quality assurance employee last assigned at Electrical Power Products from August 28, 2017, and was separated from the assignment, but not the employment, on October 24, 2017. On October 24, 2017, the client informed the employer that claimant's assignment had ended. Chad Plueger, from the employer, attempted to contact claimant to inform him that his assignment ended, but Mr. Plueger was unsuccessful in reaching claimant. Claimant later called the employer on October 24, 2017. Employer Exhibit 1. Claimant told the employer that his position had ended. Employer Exhibit 1. Claimant did not request an additional assignment from the employer on October 24, 2017. Employer Exhibit 1.

On October 25, 2017, while claimant was performing job searches, he saw a position for a maintenance technician at the employer on the website ZipRecruiter. Claimant Exhibit A. Claimant made an application through ZipRecruiter for this position. Claimant Exhibit A. Claimant submitted his resume with his application. Claimant included on his resume that he had worked for the employer. On October 26, 2017, claimant received notification that his "application for **Maintenance Technician** at **Advance Services Inc** was viewed!" Claimant Exhibit A (emphasis in original). Claimant did not hear anything more from the employer regarding this position.

On November 2, 2017, claimant contacted the employer and asked if there were any assignments available for him. The employer did not have any assignments available for him at that time.

The employer has a policy that requires employees "to contact Advance Services, Inc. within three working days after [their] assignment ends to request further assignments[.]" Employer Exhibit 1. Claimant was aware of the policy. Employer Exhibit 1.

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

For the reasons that follow, the administrative law judge concludes the claimant's separation was with good cause attributable to the employer.

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.

Iowa Admin. Code r. 871-24.26(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 and seeking work at the end of the temporary assignment. Although claimant did not request an additional assignment on October 24, 2017 when he contacted the employer, he did essentially request an additional assignment from the employer when he applied for a maintenance technician position at the employer on October 25, 2017 through the website ZipRecruiter. Claimant also received confirmation on October 26, 2017 that his “application for the **Maintenance Technician at Advance Services Inc** was viewed!” Claimant Exhibit A (emphasis in original). It was reasonable for claimant to believe that the employer was on notice no later than October 26, 2017 that he was requesting an additional assignment.

Claimant substantially complied with Iowa Code section 96.5(1)(j), when he applied for the maintenance technician position at the employer through ZipRecruiter on October 25, 2017, thus putting the employer on notice he was requesting an additional assignment. Since claimant contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and there was no work available, no disqualification is imposed. Benefits are allowed.

**DECISION:**

The November 6, 2017, (reference 08) unemployment insurance decision is reversed. Claimant’s separation from employment was attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs