

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GARY M CHELSVIG
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 15A-UI-14189-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/29/15
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 22, 2015, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 13, 2016. Claimant participated. Amy Jessip participated on behalf of claimant. Employer participated through human resources risk manager, Michael Payne. Employer Exhibit One and Employer Exhibit Two were admitted into evidence with no objection.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Did the claimant quit by not reporting for an additional work assignment 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: The claimant was employed temp full-time as a general laborer last assigned at Ferrara Candy Company from September 15, 2015, and was separated from the assignment, but not the employment, on October 26, 2015. On October 23, 2015, the employer was notified by Ferrara Candy Company that claimant's assignment was to end immediately. The employer attempted to contact claimant on October 26, 2015 and left a message that he was not to report to Ferrara Candy Company. Claimant worked on October 26, 2015 at Ferrara Candy Company because his supervisor at Ferrara Candy Company did not know his assignment had ended. The employer attempted to contact claimant again on October 26, 2015 and left another message. On October 27, 2015, claimant was told by Ferrara Candy Company that his assignment ended. Claimant then contacted the employer on October 27, 2015. Claimant did not request additional assignment at this time. The first time claimant requested an additional assignment from the

employer was January 12, 2016. After the assignment ended, claimant failed to report to the employer within three working days and request further assignment as required by written policy. The employer has a written policy that required claimant to request further assignment within three working days of his assignment ending. Employer Exhibit Two. Claimant signed for the written policy and received the policy on September 11, 2015. Employer Exhibit Two. Claimant's assignment ended, but he was not discharged from Ferrara Candy Company.

REASONING AND CONCLUSIONS OF LAW:

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

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibits submitted. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

The first issue is to determine whether claimant was discharged from the employer or did he quit. For the reasons stated below, this administrative law judge finds claimant voluntarily quit his employment when he failed to request an additional assignment within three working days from the end of his assignment.

Iowa Code § 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.

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 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 employment assignment *and* who seeks reassignment." I.C.A. 96.5(1)(j) (Emphasis added).

In this case, the employer had notice of claimant's availability because it attempted to notify him of the end of the assignment and spoke with him on October 27, 2015. However, when the employer spoke to claimant on October 27, 2015, he did not request another assignment. Claimant failed to request an additional assignment from the employer until January 12, 2016.

Even though claimant requested an additional assignment from the employer on January 12, 2016, he did not request it within three business days from his assignment ending on October 27, 2015, and therefore is considered to have quit the employment. Benefits are denied.

DECISION:

The December 22, 2015, (reference 03) unemployment insurance decision is affirmed. 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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs