

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE C VILLELA

Claimant

APPEAL NO. 13A-UI-10709-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 03/17/13

Claimant: Appellant (2)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

STATEMENT OF THE CASE:

Jose Villela filed a timely appeal from the September 16, 2013, reference 02, decision that denied benefits in connection with an August 15, 2013 separation. After due notice was issued, a hearing was held on October 14, 2013. Claimant participated. Michael Payne represented the employer. Exhibits One, Two and Three were received into evidence.

ISSUE:

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jose Villela resides in Texas and works as a migrant farm worker during the summer months. For more than a decade, Mr. Villela has traveled to Iowa in the summer to work as a detassling crew leader at Syngenta. When the work at Syngenta is done, Mr. Villela returns to his home in Texas. Jose Villela was most recently employed by Advance Services, Inc., on a full-time, temporary basis as a detassling crew leader at Syngenta until August 15, 2013, when he completed the assignment. Mr. Villela had started that assignment on July 15, 2013. On July 11, 2013, ASI had Mr. Villela sign an End of Assignment Policy that obligated him to contact ASI within three working days of the end of the assignment. The policy statement indicated that the employer would otherwise conclude that he had voluntarily quit, which could impact his eligibility for unemployment insurance benefits. The employer did not provide Mr. Villela with a copy of the policy Mr. Villela signed. The employer also had Mr. Villela sign additional policies, but did not give Mr. Villela a copy of those policies. After Mr. Villela completed the assignment, he next had contact with ASI on August 22, 2013. At that time, Mr. Villela told the ASI rep that he was not looking for more work with that company and the ASI representative reminded him of the End of Assignment Policy.

REASONING AND CONCLUSIONS OF LAW:

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.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer elected not to have anyone with personal knowledge of Mr. Villela's employment participate in the hearing.

The evidence in the record indicates that employer's Written End of Assignment policy statement complied with the requirements of Iowa Code section 96.5(1)(j). However, the employer did not provide Mr. Villela with a copy of the policy, as required by the law. The employer witness stated that a copy of the policy was somehow put out on a table and it was up to Mr. Villela and others to decide whether to take the copy. Mr. Villela denies that assertion that a copy of the documents he signed was made available to him. The weight of the evidence indicates that the employer did not comply with the statutory requirement that the employer provide Mr. Villela with a copy of the policy he signed. In light of that failure to provide a copy of the document, the statute cannot be used as a basis for disqualifying Mr. Villela for benefits and Mr. Villela was under no obligation to contact the employer for further employment once he completed the assignment on August 18, 2013.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Villela's August 15, 2013 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Villela is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Villela.

DECISION:

The Agency representative's September 16, 2013, reference 02, decision is reversed. The claimant's August 15, 2013 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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