

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHANIE R SHAW

Claimant

APPEAL 21A-UI-17092-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 05/23/21

Claimant: Respondent (2)

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

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The employer/appellant, Advance Services Inc., filed an appeal from the August 2, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 24, 2021. The claimant, Stephanie R. Shaw, participated. The employer participated through Melissa Lewein, risk manager.

The administrative law judge took official notice of the administrative records. Employer Exhibits 1 and 2 were admitted into evidence over objection. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

Did claimant voluntarily quit the employment with good cause attributable to the employer?

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?

Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time on assignment from April 13, 2021 until April 29, 2021 at XPO Logistics. On April 30, 2021, claimant tested positive for COVID-19 and was released to return to work on May 13, 2021. When claimant did not return, the client ended the assignment. On

May 16, 2021, claimant was contacted by an employer representative to say that the assignment but not the employment had ended. (See Employer Exhibit 1).

When claimant was hired, she was trained and signed off on the employer's reassignment policy, which requires an employee contact the employer within three business days of an assignment ending to request new assignment. (See Employer Exhibit 2). Claimant denied knowledge of the policy and employer stated claimant has worked several assignments and presented the policy multiple times, most recently in February 2020. Employer documents its contacts with employees within its internal database.

Claimant did not request a new assignment within three business days. Assignments were available, had claimant requested. Claimant stated she contacted the employer a week after her assignment ended. Employer records reflect Claimant next contacted Employer on July 6, 2021 to request a new assignment.

The administrative record reflects that claimant has not received unemployment benefits, since filing a claim with an effective date of May 23, 2021. The claimant has not received federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC).

Steve Volle participated in the July 23, 2021 fact-finding interview on behalf of Advance Services Inc.

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.

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(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.

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."

Claimant was trained on employer's reassignment policy upon hire. The claimant's assignment ended on May 16, 2021. Claimant did not contact the employer within three business days to request a new assignment. Accordingly, the claimant's separation from employment is not attributable to the employer. Benefits are denied.

Because the claimant's separation was disqualifying, benefits were originally allowed. However, he did not receive any benefits and therefore there is no overpayment in accordance with Iowa Code § 96.3(7). The administrative law judge further concludes the employer did satisfactorily

participate in the fact-finding interview pursuant to Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10.

Because claimant is not eligible for regular unemployment insurance benefits, she would not be eligible for Federal Pandemic Unemployment Compensation (FPUC) benefits pursuant to PL116-136, Sec. 2104.

DECISION:

The August 2, 2021, (reference 01) unemployment insurance decision is REVERSED. The claimant voluntarily quit the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

September 28, 2021
Decision Dated and Mailed

jlb/kmj