

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL GALLEGOS
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 17A-UI-12571-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/11/17
Claimant: APPELLANT (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 1, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 11, 2018. Claimant participated along with his wife, and witnesses Dominga Gallegos. Claimant and her witness participated with the assistance of Language Link Spanish Interpreter Sophia identification number 10634. Claimant was represented by Megan Norberg, attorney at law. Employer participated through Melissa Lewien, Risk Management Manager. Claimant's Exhibits A and B were entered into the record. Employer's Exhibits 1 through 4 were entered into the record.

ISSUE:

Did the claimant make a timely request for another job assignment, and if so, did he refuse another suitable offer of work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was last assigned to work at the Syngenta plant full-time in Slater, Iowa. He worked from January 18, 2017 until October 27, 2017 when Advance Services employee Imelda notified him that his assignment was complete. The claimant and his wife had worked as temporary employees for the Syngenta plant for the last nineteen years and were employees of Advance Services since 2006.

The claimant and his wife have a permanent home in San Juan, Texas where they reside when not working in Iowa. For the last five years while working in Iowa, the claimant and his wife have rented a trailer located in Cambridge, Iowa. The trailer in Cambridge, Iowa is roughly thirteen miles from the Syngenta plant in Slater, Iowa.

At the time Imelda told the claimant his assignment was finished, the claimant did ask for another job assignment. Martha then called the claimant and offered him and his wife additional jobs. The claimant was actually offered two additional jobs at a farm in Gault, Iowa. The jobs offered were over a sixty mile one-way trip from the claimant's Iowa residence in Cambridge,

Iowa. The claimant and his wife have suitable housing available for year round work in Iowa. In 2008 the claimant and his wife worked an additional assignment that was at a location other than the Syngenta plant. The claimant was not required to move to a new location closer to the job offered by Advance Services.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment with good cause attributable to the employer and adequately notified employer of his availability for additional assignments.

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 work at the conclusion of the temporary assignment. In this case, the employer had notice of the claimant's availability because they notified him of the end of the assignment.

The claimant did not refuse a suitable offer of a new work assignment.

Iowa Code section 96.5(3)a provides:

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

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. (1) In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

- (a) One hundred percent, if the work is offered during the first five weeks of unemployment.
 - (b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
 - (c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
 - (d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.
- (2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

The offer was unsuitable, as it was simply too far away from the claimant's Iowa residence. The claimant would have been required to drive more than sixty miles one way to work at the new job assignment. The claimant was not required to move closer to the job in order to make it a suitable offer.

The claimant has worked other jobs besides Syngenta indicating he is not holding himself available for only one employer or job assignment. Additionally, claimant has two residences and has always returned to a suitable offer of work when called to do so. The claimant is able to and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The December 1, 2017, (reference 01) decision is reversed. The claimant's separation from employment was attributable to the employer. The claimant had adequate contact with the employer about his availability as required by statute. The claimant did not refuse a suitable offer of work. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs