

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW G HERBST
Claimant

APPEAL NO. 11A-UI-10811-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 07/10/11
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 12, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on September 8, 2011. Claimant participated and was represented by Michele Van Wyhe, Attorney at Law. Employer participated through unemployment specialist Holly Carter. Employer's Exhibit 1 was admitted to the record. The administrative law judge took judicial notice of the administrative record.

ISSUE:

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a temporary welder at Simco from December 6, 2010 and was separated from employment on May 11, 2011. Sioux City Office Manager Molly Meuke called him on May 16 and spoke with him directly to tell him that the assignment had ended. She did not offer another assignment and he did not ask. It was clear that there were no other welding assignments available. He picked up his checks at the office on May 13 and 20, 2011. He also called in on June 14 and August 16, 2011. Carter does not work from the Sioux City office. The three-day reporting policy given to the claimant was contained on a document with other policies and contractual notices and not a separate document. (Employer's Exhibit 1)

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 § 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 § 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 § 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.

Since employer provided no evidence that it presented claimant with a written copy of the reporting policy, separate from other contractual matters, claimant's recollection that he did not receive notice of the reporting policy is credible. Without that, claimant was reasonable to opt to look for work elsewhere or to report for additional work when he did. Furthermore, 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. In any case, there was no other welding work available to claimant at the time. Benefits are allowed.

DECISION:

The August 12, 2011 (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. Benefits are allowed, provided the claimant is otherwise eligible. The benefits withheld shall be paid to claimant.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css