

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN A SOLIS-GOMEZ

Claimant

APPEAL NO. 14R-UI-13073-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 10/05/14

Claimant: Respondent (1)

Section 96.5(1)j – Timely Request for another Job Assignment

STATEMENT OF THE CASE:

Advance Services, Inc. filed a timely appeal from a representative's decision dated October 21, 2014 (reference 01) which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on November 12, 2014; following notice that had been provided to the parties in the English language. The claimant did not participate in that hearing. The employer participated. On November 14, 2014 an administrative law judge decision was entered, reversing the adjudicator's determination finding that the claimant had voluntarily left employment without good cause attributable to the employer. It found that the claimant had been overpaid unemployment insurance benefits in the amount of \$965. The claimant appealed that decision to the Employment Appeal Board. On December 18, 2014 the Employment Appeal Board remanded the matter to the unemployment insurance Appeals Bureau for a new hearing, specifying that the previous notice of hearing in the English language did not afford the claimant due notice for the hearing that was held on November 12, 2014. In compliance with the Appeal Board's directive, a new telephone was scheduled; however, a notice of hearing was again sent to the claimant in the English language. Because the claimant was represented by Iowa Legal Aid at the time, requirements of the notice of hearing were translated for the claimant and the claimant participated in the hearing on this matter that was scheduled for and held on January 15, 2015. Participating on behalf of the claimant was Ms. Lorriane Gaynor, Attorney Iowa Legal Aid. The employer participated by Mr. Michael Payne, Risk Manager. The official interpreter was Ms. Anna Pottebaum. Employer's Exhibits A and B and Claimant's Exhibits One and Two were admitted into evidence.

ISSUES:

The issues are whether the claimant left employment with good cause attributable to the employer, whether the claimant has been overpaid unemployment insurance benefits, and if so whether the claimant is responsible for repaying the overpayment or whether the employer's account should be subject to charge.

FINDINGS OF FACT:

The administrative law judge, having considered heard the testimony and considered all of the evidence in the record, finds that Juan Solis-Gomez was employed by captioned temporary employment service beginning on November 8, 2013. Mr. Solis-Gomez was last employed by Advance Services, Inc. from July 14, 2013 until October 3, 2014 when he was informed by a representative of Advance Services that the assignment had ended at the client's request because the claimant had driven a company forklift "too fast." Mr. Solis-Gomez was last assigned to work at the Syngenta Seed Company as a general laborer and was being paid by the hour. At the time that the claimant began employment, he was provided and signed an agreement advising that it was required to check in for work within three business days following the completion of each assignment, and that failure to do so would be considered to be a voluntary quit and might affect his unemployment insurance benefits.

On October 3, 2014 the claimant was informed that the claimant was informed that the assignment at Syngenta Seed had ended. He was informed of this by a representative of Advance Services. The claimant questioned Ms. Martinez at that time about the availability of any other work assignments through Advance Services or the possibility of returning to the Syngenta Seed assignment. He was told at that time that no work was available. On Monday, October 6 and Tuesday, October 7 the claimant called one of the telephone numbers provided to him by Advance Services, to inquire about additional work or returning to Syngenta. On October 8 he called and left a message inquiring about other work assignments.

Because the claimant's direct contact with Ms. Martinez and the claimant's phone contacts had not been noted in the company computer records, the employer believed that Mr. Solis-Gomez had not complied with the requirement that he call in to make himself available for other assignments within three working days. It is the employer's stated position that although the claimant's assignment was ended by the client employer for driving a forklift too fast, the separation from the client employer at that time was not considered misconduct and did not preclude the claimant from being assigned to other employer's or back to Syngenta Seed Company.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he or she voluntarily quits without good cause attributable to the employer. See Iowa Code Section 96.5-1. Because the employer is a temporary employment agency and temporary employment agencies are governed by Iowa Code Section 96.5(1)j, specific requirements and restrictions are placed on both the employer and the employee with regard to claims for unemployment insurance benefits.

Iowa Code § 96.5-1 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.

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.

In this case, the evidence establishes that the employer at the time of hire advised Mr. Solis-Gomez in both English and Spanish of the three day notification rule and that his failure to notify the temporary employment service within three working days of his availability for more assignments might be considered as a voluntary quit and effect his unemployment insurance benefits.

Mr. Solis-Gomez was aware of the rule and made direct inquiry to the Advance Service representative whether any other jobs were available to him. This inquiry was made at the time that the claimant was informed that his job with Syngenta had ended. In addition, the evidence in the record establishes that the claimant called on two more occasions within three working days, calling one of the telephone numbers provided to him by a representative of Advance Services to inquire about additional work. The purpose of the statute is to provide notice to the temporary agency employer that the claimant was 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 at the end of the assignment and the claimant had inquired about more work at that time. The hearing record also establishes that the claimant made additional

efforts to establish his availability for additional assignments by calling in and speaking to an Advance Services representative on at least two further occasions within three business days. The claimant left employment with good cause attributable to the employer. He had been informed that his most recent assignment had ended and had provided notice to the temporary employment service of his availability for additional assignments as required. Benefits are allowed.

DECISION:

The representative's decision dated October 21, 2014 (reference 01) is affirmed. The claimant left employment with good cause attributable to the employer. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

can/can