

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROSALVA PEREZ
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 21A-UI-22249-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/28/21
Claimant: Respondent (1)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
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:

On October 4, 2021, the employer/appellant filed an appeal from the September 29, 2021, (reference 03) unemployment insurance decision that allowed benefits based on claimant had good cause for not notifying the temporary employer firm within three working days of completion of her last work assignment. The parties were properly notified about the hearing. A telephone hearing was held on November 29, 2021. Claimant participated through CTS Language Link Spanish interpreter ID # 14267. Employer participated through Risk Manager, Melissa Lewien. Exhibit 1 was admitted into the record. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUES:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
Did the claimant make a timely request for a new job assignment?
Should claimant repay benefits?
Should the employer be charged due to employer participation in fact finding?
Is the claimant overpaid benefits?
Is the claimant eligible for FPUC?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's primary language is Spanish. Claimant began working for employer on August 20, 2018. When claimant began working for employer she electronically signed an acknowledgement that she "understood that it was her responsibility to contact Advance Services, Inc. within (3) three working days after [her] assignment ends to request further assignments or [she] will be considered to have voluntarily quit." (Exhibit 1).

Claimant was put in four different assignments while she worked for the employer. Claimant's last assignment was at Corteva. Claimant's assignment was completed on Friday, February 26, 2021.

On March 3, 2021, claimant contacted Laura Martinez and requested another assignment. Ms. Martinez is an employee of the employer that works as a manager at the Corteva site in Toledo, Iowa. Ms. Martinez told claimant to contact the Waterloo branch of the employer and request another job assignment. Claimant contacted the Waterloo office and they informed her they did not have a job assignment for her and they would contact her when they had one for her. The employer did not call the claimant with a job assignment. In July 2021, claimant contacted the employer again requesting a job assignment.

Claimant filed for benefits for the week beginning February 28, 2021. Claimant's weekly benefit amount was \$410.00. Claimant received the maximum benefit amount of \$6,916.18.

Claimant received Federal Pandemic Unemployment Compensation (FPUC). Claimant received it for weeks ending March 6, 2021, through week ending June 12, 2021. Claimant received \$300 a week for 15 weeks for a total of \$4,500.00.

The employer participated in a fact-finding interview. The employer submitted documents to the fact finder for their consideration.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was with good cause attributable to the employer.

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. (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 lettered paragraph:

(a) "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.

(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 decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Claimant testified she contacted Ms. Martinez, an employee of the employer that manages the employees at the Corteva assignment. Ms. Martinez directed her to call the Waterloo branch to request an assignment. Claimant contacted the Waterloo branch, and they did not have any job

assignments available to her at that time. The employee at the Waterloo branch informed claimant they would call her when they had a job assignment available to her. Ms. Lewien disputes this testimony because employees are required to log every contact they have with employees and there is nothing logged in claimant's file that shows she called the Waterloo branch. Ms. Lewien is not located at the Waterloo branch and does not have first-hand knowledge of whether claimant called into the Waterloo branch to request a new job assignment on March 3, 2021. After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's testimony of those events.

The administrative law judge finds that claimant did contact the employer, both through Ms. Martinez and when she contacted the Waterloo branch and requested another job assignment. The employer did not have a job assignment available for her at that time. As a result, no disqualification is imposed. Claimant is entitled to benefits. The employer's account shall be charged.

The issue of claimant's overpayment of benefits, whether claimant should repay benefits, and whether the employer participated in fact-finding is moot since claimant is eligible for benefits.

DECISION:

The September 29, 2021, (reference 03) unemployment insurance decision is affirmed. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided she is otherwise eligible.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

January 11, 2022

Decision Dated and Mailed

cs/abd