

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARJORIE M DURAN
Claimant

APPEAL NO. 10A-UI-07166-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 04/04/10
Claimant: Respondent (1)

Section 96.5-1-j – Separation from Temporary Employer
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Advance Services (employer) appealed a representative's May 10, 2010 decision (reference 01) that concluded Marjorie Duran (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 6, 2010. The claimant participated personally. The employer participated by Scott McKenzie, Unemployment Specialist. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason and whether she is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services from June 3, 2009, through April 12, 2010. She signed a document on May 12, 2009, indicating that she was to contact the employer within three days following the completion of an assignment to request placement in a new assignment. The claimant was given a copy of the document. The claimant completed her last assignment on April 22, 2010, and sought reassignment on April 26, 2010. The employer did not have any work for the claimant even though she was able and available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not separated from the employer for any disqualifying reason.

Iowa Code section 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.

As an employee of a temporary service, the employer must advise the claimant of a three-day notice requirement and give the claimant a copy of that requirement. The notice requirement cannot be a part of the contract for hire. The claimant sought reassignment and no work was available. She has satisfied the requirements of Iowa Code section 96.5-1-j. Benefits are allowed.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

There was no evidence presented at the hearing of anything that would disqualify the claimant for being unable or unavailable to perform work. The claimant is able and available for work. Benefits are allowed.

DECISION:

The representative's May 10, 2010 decision (reference 01) is affirmed. The claimant was separated from the employer for good cause attributable to the employer. She is able and available for work. The claimant is eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css