

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**VERONICA SALDANA DE VALDEZ**  
Claimant

**APPEAL NO. 18A-UI-11512-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**  
Employer

**OC: 10/28/18**  
**Claimant: Respondent (1)**

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 20, 2018, reference 01, decision that held the claimant was eligible for benefits provided she met all other eligibility requirements and the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant's October 19, 2018 separation from the temporary employment firm was for good cause attributable to the employer. After due notice was issued, a hearing was held on December 12, 2018. Claimant Veronica Saldana De Valdez participated. Melissa Lewien represented the employer and presented additional testimony through Laura Martinez. Spanish-English interpreters Rose Severina and Fermin Veagra of CTS Language Link assisted with the hearing. Exhibits 1, 2, 5 and 6 were received into evidence.

**ISSUE:**

Whether the claimant's October 19, 2018 separation from the temporary employment agency was for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Advance Services, Inc. (ASI) is a temporary employment agency. Claimant Veronica Saldana De Valdez is a Spanish-speaking person. Ms. Saldana De Valdez registered for work with ASI in June 2018. At that time, an ASI representative presented Ms. Saldana De Valdez with a packet of documents. That packet did not include an ASI End of Assignment Policy. The employer has provided such a document, in Spanish and English, for the appeal hearing. The Spanish version included Ms. Saldana De Valdez's name and a purported electronic signature, dated June 26, 2018. The employer did not have Ms. Saldana De Valdez read or electronically sign any such document. Ms. Saldana De Valdez did not receive such a document prior to receiving the employer's proposed exhibits for the unemployment insurance appeal hearing. The particular policy states, in English, as follows:

I understand that it is my responsibility to contact Advance Services, Inc. within three working days after my assignment ends to request further assignment or I will be

considered to have voluntarily quit. Failure to do so could affect my eligibility for unemployment insurance benefits.

I have read this policy and I understand the ramifications of my actions as stated in this policy. I received a copy of this policy for my records.

After Ms. Saldana De Valdez registered for work with ASI, she performed work in a single, full-time, temporary work assignment sorting corn at a Pioneer facility in Toledo. Laura Martinez is an ASI on-site Human Resources Coordinator at the Pioneer facility in Toledo. Ms. Martinez speaks English and Spanish. Ms. Saldana De Valdez began the Pioneer assignment on August 20, 2018. Ms. Saldana De Valdez's work hours in the assignment were 5:00 a.m. to 1:30 p.m., Monday through Friday. Ms. Saldana De Valdez also worked Saturdays as needed. Ms. Saldana De Valdez has at all relevant times resided in Marshalltown. Though Ms. Saldana De Valdez owns a vehicle, she elected to forgo using that vehicle for transportation to work so that her son could use the vehicle to drive to school. While Ms. Saldana De Valdez worked at the Pioneer facility in Toledo, she carpooled with a coworker, Vanessa.

Ms. Saldana De Valdez completed the Pioneer assignment on October 19, 2018. At that point, Pioneer had no more work for Ms. Saldana in the Toledo assignment. A few days before the assignment ended, Pioneer posted the upcoming work schedule, which did not include work hours for Ms. Saldana De Valdez. Ms. Saldana De Valdez learned on October 19, 2018 that the assignment was coming to an end. Ms. Martinez spoke to Ms. Saldana De Valdez that morning to confirm Ms. Saldana De Valdez's understanding that the assignment was ending. At that time, Ms. Saldana De Valdez expressed interest in additional work through ASI. Ms. Martinez told Ms. Saldana De Valdez that she *might* have another work assignment at a Pioneer facility in Reinbeck, Iowa. Ms. Martinez did not offer another assignment to Ms. Saldana De Valdez at that time. While the commute from Marshalltown to Toledo took about 25 minutes, Reinbeck was a greater distance from Marshalltown and the commute would take about 40 minutes. Ms. Saldana De Valdez knew she would not be able to carpool with Vanessa to the new jobsite. When Ms. Martinez mentioned a possible assignment in Reinbeck, Ms. Saldana De Valdez mentioned that she would not have transportation to Reinbeck.

Ms. Saldana De Valdez and the employer next had contact on October 26, 2018, when Ms. Saldana De Valdez telephoned ASI to request additional work. At that time, Ms. Martinez agreed to look for an additional assignment for Ms. Saldana De Valdez. Following the October 26 contact, Ms. Martinez retroactively created a purported record of her October 19 contact with Ms. Saldana De Valdez. Ms. Martinez used a "Message Report" journaling system ASI has in place to document contacts at the time they occur. Ms. Martinez had made no documentation on October 19 of her contact with Ms. Saldana De Valdez on that day. Rather than first create a note to document the contact that had just occurred on October 26, Ms. Martinez instead first created a note purporting to document the October 19 interaction. That note erroneously stated the assignment had ended due to Ms. Saldana De Valdez's "fair" work performance. The note stated that Ms. Saldana De Valdez had completed the assignment, but then erroneously added that Ms. Saldana De Valdez "DID NOT ASK FOR MORE WORK WHEN NOTIFIED OF ASSIGNMENT ENDING." Though Ms. Martinez asserts that she spoke with Ms. Saldana De Valdez on October 15 regarding the Pioneer assignment coming to an end and asserts that Ms. Saldana De Valdez expressed interest in additional work at that time, Ms. Martinez never documented any such purported contact. The purported October 15 contact was not between Ms. Martinez and Ms. Saldana De Valdez, but may have been between Ms. Martinez and Vanessa. Though Ms. Martinez asserts she left a voicemail message for Ms. Saldana De Valdez on the afternoon of October 19, Ms. Martinez never

documented any such purported attempted contact and Ms. Saldana De Valdez received no such message.

### **REASONING AND CONCLUSIONS OF LAW:**

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.

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 Ct. 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.*

The weight of the evidence in the record establishes an October 19, 2018 separation that was for good cause attributable to the temporary employment firm. Though the employer's policy statement complies with the requirements of Iowa Code section 96.5(1)(j), the weight of the evidence indicates that Ms. Saldana De Valdez did not see, did not read, did not sign, and did not receive the policy at the time of hire. Accordingly, Ms. Saldana De Valdez's obligation to ASI ended on October 19, 2018, when she fulfilled the contract of hire by completing the Toledo Pioneer assignment. Even if Iowa Code section 96.5(1)(j) had applied to Ms. Saldana De Valdez's employment with ASI, the weight of the evidence establishes that she was in contact with an ASI representative on the same day the assignment ended and at that time expressed interest in a new assignment. At the time of that contact, ASI made reference to a potential new assignment located a substantially further distance from Ms. Saldana De Valdez's home in Marshalltown, but ASI did not offer a new assignment at that time. The next actual contact between the parties came on October 26, 2018, when Ms. Saldana contacted ASI in search of work. The weight of the evidence fails to support Ms. Martinez's assertion that she left a voicemail message for Ms. Saldana De Valdez on October 19. The weight of the evidence establishes that Ms. Martinez is an unreliable historian and non-credible witness. Ms. Martinez provided testimony that was internally inconsistent. Ms. Martinez left gaping holes when documenting, or failing to document, relevant interactions with Ms. Saldana De Valdez. On October 26, Ms. Martinez created an erroneous record of her prior interactions with Ms. Saldana De Valdez. Ms. Saldana De Valdez's testimony was detailed, internally consistent, and credible. Because the evidence in the record establishes an October 19, 2018 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Ms. Saldana De Valdez is eligible for benefits provided she meets all other eligibility requirements. The employer's account may be charged.

**DECISION:**

The November 20, 2018, reference 01, decision is affirmed. The claimant's October 19, 2018 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs