

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSELYN R YORK
Claimant

ADVANCE SERVICES INC
Employer

APPEAL NO. 20A-UI-09427-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20
Claimant: Respondent (1)

Iowa Admin. Code r. 871-24.26(19) – Fulfillment of the Contract of Hire
Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 29, 2020, reference 01, decision that allowed benefits to the claimant, provided she met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant's October 23, 2019 separation from the temporary employment firm was for good cause attributable to the employer. After due notice was issued, a hearing was held on September 23, 2020. The claimant did not provide a telephone number for the appeal hearing and did not participate. Melissa Lewien represented the employer and presented additional testimony through Kellene Wheeler.

ISSUE:

Whether the claimant's October 23, 2019 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: Joselyn York established her employment with Advance Services, Inc. (ASI) in September 2019. Ms. York's initial contact with ASI was at its Ottumwa branch office. The staff at the Ottumwa branch office handled the onboarding process. ASI has provided a policy document that includes an Assignment Policy and an End of Assignment Policy. The End of Assignment Policy states 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 assignments or I will be considered to have voluntarily quit. Failure to do so could affect my eligibility for unemployment insurance benefits.

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

The policy contains a space for an “electronic signature” a checked box next to the phrase Electronic Signature Accepted and above the phrase Employee Signature. It is unclear whether Ms. York read, understood or signed to acknowledge the End of Assignment Policy or whether she in fact received a copy of the policy document.

On September 19, 2019, Ms. York began a full-time, temporary work assignment at the Corteva Pioneer seed and plant processing facility located nine miles from Ottumwa. Kellene Wheeler is the ASI Human Resources Coordinator and Onsite Supervisor assigned to the facility. Ms. Wheeler deals only with ASI matters pertaining to the Corteva Pioneer facility. Ms. Wheeler was not involved in onboarding Ms. York at the Ottumwa facility and would not be part of any discussion regarding assignments other than assignments at the Corteva Pioneer facility. Ms. York’s work hours were 6:00 a.m. to 4:00 or 5:00 p.m., six days a week. A Pioneer lead person functioned as Ms. York’s immediate supervisor. The assignment was scheduled to last through the October 30, 2019 anticipated end of the harvest. Corteva Pioneer elected to end Ms. York’s assignment early on October 23, 2019, based on Ms. York’s inability to perform to the satisfaction of Corteva Pioneer staff. On October 23, Ms. Wheeler notified Ms. York that, pursuant to the request of Corteva Pioneer, she was no longer needed. Ms. Wheeler had no further contact with Ms. York once Ms. York departed from the Corteva Pioneer facility on October 23, 2019.

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. ...

The evidence in the record establishes an October 23, 2019 separation that was for good cause attributable to the employer. First, the evidence indicates that the client's early termination was based on Ms. York's inability to perform to the satisfaction of Corteva Pioneer staff, rather than based on misconduct in connection with the assignment. Inability to perform to the satisfaction of the employer is not misconduct in connection with the employment. See Iowa Administrative Code rule 871-24.32(1)(a). Second, the employer presented insufficient evidence to prove that Ms. York actually read, signed, or received a copy of the ASI End of Assignment policy. No actual signature appears on the policy document. Neither employer witness had personal knowledge pertaining to Ms. York's onboarding experience. The evidence fails to prove compliance with Iowa Code section 96.5(1)(j)(2). Accordingly, Ms. York fulfilled her contract of hire when she completed all the work the employer had for her in the assignment and was under no obligation to seek another assignment with the employer. Even if subsection (j) had applied to this employment separation, neither employer witness had personal knowledge regarding whether Ms. York did or did not make further contact with the Ottumwa branch regarding another assignment. The mere absence of a note documenting such contact is not proof there was no such contact. Ms. York is eligible for benefits provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The July 29, 2020, reference 01, decision is affirmed. The claimant's October 23, 2019 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.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored, slightly textured background.

James E. Timberland
Administrative Law Judge

September 25, 2020
Decision Dated and Mailed

jet/scn