

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**KIMBERLY J STICE**  
Claimant

**APPEAL NO. 19A-UI-04195-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**  
Employer

**OC: 04/28/19**  
**Claimant: Respondent (2)**

Iowa Code Section 96.5(1)(j) – Separation from Temporary Employment  
Iowa Code Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 20, 2019, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant's March 10, 2019 separation was for good cause attributable to the temporary employment firm. After due notice was issued, a hearing was held on June 17, 2019. Claimant Kimberly Stice did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Melissa Lewien represented the employer. Exhibits 1 through 4 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to Ms. Stice. The administrative law judge took official notice of the fact-finding materials for the purpose of documenting the employer's participation in the fact-finding interview.

**ISSUES:**

Whether Ms. Stice's separation from the temporary employment agency was for good cause attributable to the employer.

Whether Ms. Stice was overpaid unemployment insurance benefits.

Whether Ms. Stice is required to repay overpaid benefits.

Whether the employer's account may be charged.

**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 firm. Kimberly Stice commenced her employment with ASI in June 2018 and performed work in three temporary work assignments. The most recent work assignment was a full-time temporary work assignment at Midwest Manufacturing. Ms. Stice began the assignment on March 4, 2019. Ms. Stice's work hours in the assignment were 7:00 a.m. to 3:30 p.m., Monday through Friday. Ms. Stice last performed

work in the assignment on March 7, 2019. On that day, Lance Gesell Midwest Manufacturing Plant Manager contacted ASI representative Jennifer Wilson to end the assignment. On March 7, 2019, Ms. Wilson telephoned Ms. Stice and spoke directly with Ms. Stice. Ms. Wilson told Ms. Stice that the assignment at Midwest Manufacturing had ended. Despite Midwest Manufacturing's decision to end the assignment, Ms. Stice remained eligible for additional assignments through ASI. However, Ms. Stice did not request an additional assignment on March 7, 2019 or in the several days that followed. Ms. Wilson documented the March 7, 2019 contact that same day. Ms. Wilson's documentation included documentation that Ms. Stice had not requested an additional assignment in connection with the contact. Ms. Stice next made contact with ASI on March 28, 2019, when she went to the ASI office to request additional work.

On June 12, 2018, the employer had Ms. Stice "electronically sign" to acknowledge the employer's Assignment Policy and End of Assignment Policy. The End of Assignment policy stated 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.

Ms. Stice established an original claim for benefits that was effective April 28, 2019 and received \$1,914.00 in benefits for the six weeks between April 28, 2019 and June 8, 2019. ASI is a base period employer in connection with the claim. On May 16, 2019, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Ms. Stice's separation from the employer. ASI Risk Manager Steve Volle represented the employer at the fact-finding interview.

#### **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.

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. The language of employer's End of Assignment policy complies with the requirements of Iowa Code section 96.5(1)(j). The employer satisfied the notice requirements set forth at Iowa Code section 96.5(1)(j) by having Ms. Stice sign to acknowledge the policy and by providing Ms. Stice with a copy of the policy she signed. Accordingly, the statute required that Ms. Stice contact the employer within three working days of completing the assignment on March 7, 2019 to request placement in a new assignment. Ms. Stice did not request a new assignment during the March 7, 2019 contact or on any day prior to March 28, 2019. Based on Ms. Stice's failure to contact the employer within three working days to request a new assignment, Ms. Stice's separation from the ASI was a voluntary quit without good cause attributable to the employer. Ms. Stice's quit was effective March 13, 2019, three working days following the end of the assignment. Ms. Stice is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Stice must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Ms. Stice received \$1,914.00 in benefits for the six weeks between April 28, 2019 and June 8, 2019, but this decision disqualifies her for those benefits. Accordingly, the benefits Ms. Stice received constitute an overpayment of benefits. Because the employer participated in the fact-finding interview, Ms. Stice is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for the \$1,914.00 in benefits already paid to the claimant for the six weeks between April 28, 2019 and June 8, 2019.

**DECISION:**

The May 20, 2019, reference 01, decision is reversed. The claimant's separation from the temporary employment agency was a voluntary quit without good cause attributable to the temporary employment agency. The quit was effective March 13, 2019. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$1,914.00 in benefits for the six weeks between April 28, 2019 and June 8, 2019. The claimant must repay the overpaid benefits. The employer's account shall be relieved of liability for benefits, including liability for the \$1,914.00 in benefits already paid to the claimant for the six weeks between April 28, 2019 and June 8, 2019.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/rvs