

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIA C GARCIA**  
Claimant

**APPEAL NO: 12A-UI-14460-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**  
Employer

**OC: 11/04/12**

**Claimant: Respondent (2/R)**

Section 96.5-1-j – Temporary Employment  
871 IAC 24.26(15) – Temporary Employment

**STATEMENT OF THE CASE:**

Advance Services, Inc. (employer) appealed a representative's December 6, 2012 decision (reference 01) that concluded Maria C. Garcia (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 9, 2013. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Michael Payne appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was there a disqualifying separation from employment?

**FINDINGS OF FACT:**

The employer is a temporary staffing agency. The claimant began taking assignments through the employer on August 21, 2012. She began an assignment that day and worked full time as an agricultural general laborer at the employer's Lone Tree, Iowa business client. Her last day of work was October 2, 2012. The assignment ended that date because the business client deemed the assignment to be completed. The business client informed the employer of the completion of the assignment on October 3, 2012. The claimant did not contact the employer within three days of the end of the assignment to seek reassignment as required by the employer's policies to avoid being considered to be a voluntary quit. The employer did have other work available for the claimant if she had sought reassignment.

**REASONING AND CONCLUSIONS OF LAW:**

The essential question in this case is whether there was a disqualifying separation from employment. An employee of a temporary employment firm who has been given proper notice

of the requirement can be deemed to have voluntarily quit her employment with the employer if she fails to contact the employer within three business days of the ending of the assignment in order to notify the employer of the ending of the assignment and to seek reassignment. Iowa Code § 96.5-1-j; 871 IAC 24.26(15). The claimant failed to seek reassignment as required. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's December 6, 2012 decision (reference 01) is reversed. The claimant's separation was a voluntary quit through a failure to seek reassignment. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is then otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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