

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUE A NORTH
Claimant

APPEAL NO. 09A-UI-07377-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC.
Employer

**Original Claim: 10/26/08
Claimant: Appellant (2-R)**

Section 96.5-1-j – Separation from Temporary Employer

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated May 8, 2009, reference 03, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 8, 2009. The claimant participated. The employer participated by Jacque Finkral, retention coordinator, and Karen Durbin, manager Ames, Iowa location. The record consists of the testimony of Sue North, the testimony of Jacque Finkral, and the testimony of Karen Durbin.

ISSUE:

Whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is a temporary employer. When the claimant was hired on June 26, 2008, she was informed that she must contact the employer within three days of the end of an assignment to indicate that she was available to work. The claimant accepted an assignment from the employer in March 2009 to work 25 hours for an at-home care company and was paid for that assignment by the employer in a pay period ending March 29, 2009. On March 26, 2009, the claimant refused a job that was to have begun on April 3, 2009. Thereafter, the claimant had no contact with the employer until April 16, 2009. The claimant is presently accepting assignments from the employer and considers herself to be an employee of Advance Services Inc.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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 purpose of the statute is to provide notice to a temporary agency employer that the claimant is available for work at the conclusion of the most recent temporary assignment. The claimant had had a temporary assignment of 25 hours for her pay period ending March 29, 2009. The employer knew that this assignment had ended. In addition, the employer was in contact with the claimant on March 26, 2009, to offer her an assignment she refused.

The employer takes the position that the claimant voluntarily quit her job either by failing to take the temporary employment or by failing to keep in contact with the employer. Although the employer may have such policies, it is Iowa law that controls entitlement to unemployment insurance benefits. Under Iowa law, a claimant is not considered a voluntary quit if there is a refusal of a temporary assignment. In addition, the requirements of section 96.5-1-j were fulfilled. The fact that the claimant did not contact the employer after March 26, 2009 until April 16, 2009, also does not disqualify the claimant.

There may be an issue on whether the claimant was able and available for work during some of the weeks for which she is seeking unemployment insurance benefits. That issue was not properly before the administrative law judge and therefore this claim is remanded to the claims section for consideration of this issue.

DECISION:

The representative's decision dated May 8, 2009, reference 03, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible. This case is remanded back to the claims division to consider the issue of whether the claimant was able and available for work during some or all of the weeks for which she is seeking unemployment insurance benefits.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw