

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CYNTHIA J LACEY
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 16A-UI-10394-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/19/16
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 12, 2016, (reference 02) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on October 6, 2016. The claimant Cynthia Lacey participated and testified. The employer Advance Services participated through Risk Management Office Melissa Lewien and witness Tammy Rundle. Employer's Exhibits 1 and 2 were received into evidence.

ISSUE:

Did claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a temporary employee. Claimant's last assigned prior to filing for benefits was at Raining Rose and lasted from August 10, 2016, until she separated from the assignment, but not the employment, on August 25, 2016. Claimant's assignment ended when she voluntarily quit.

On August 25, 2016, claimant spoke with Rundle about ending her assignment because it was too fast paced and hurt her neck and back. Claimant had a prior spinal surgery and had not had problems working in manual labor positions before, but found that the requirements of this particular position were too much for her body. According to claimant she asked if any other assignments were available and was told by Rundle there were not. Rundle testified claimant did not ask for another assignment at this time.

The employer testified it has a policy in place which requires employees to contact it and request a new assignment within three business days of an assignment ending for any reason. The employer includes this policy in the job assignment sheet, which it testified was given to

claimant at the beginning of her assignment. (Exhibit 1). Claimant denied receiving the document and her signature is not found on the signature line. The employer did not have an explanation as to why it could not produce this document with claimant's signature. The employer was able to provide several other documents claimant signed at the time her assignment with Raining Rose began. (Exhibit 2).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from the assignment for no disqualifying reason.

Iowa Code § 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. (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 lettered paragraph:

(a) "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.

(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 § 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 § 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.

Claimant denied receiving a copy of any policy that required her to report an assignment ending within a certain time frame. Since the employer provided no evidence that it presented claimant with a written copy of the reporting policy, claimant's recollection that she did not receive notice of the reporting policy is credible. Without that, claimant was reasonable to opt to look for work elsewhere or to report for additional work when she did. Furthermore, the statute requires that the policy shall be separate from any contract of employment, which the employer's documentation shows, in this case, it was not. Benefits are allowed.

DECISION:

The September 12, 2016, (reference 02) unemployment insurance decision is reversed. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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