

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLY S ROMANS**

Claimant

**APPEAL NO. 14A-UI-00747-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**

Employer

**OC: 05/26/13**

**Claimant: Respondent (2)**

Section 96.5(1) – Quit  
Section 96.3(7) – Overpayment  
871 IAC 24.10 – Employer Participation

**STATEMENT OF THE CASE:**

The employer, Advance Services, filed an appeal from a decision dated January 17, 2014, reference 03. The decision allowed benefits to the claimant, Kimberly Romans. After due notice was issued a hearing was held by telephone conference call on February 25, 2014.

The claimant provided a phone number where she could be contacted. That number was dialed twice at 8:59 a.m. and 9:01 a.m. There was no answer and the claimant did not participate.

The employer participated by Risk Manager Michael Payne and Office Manager Candi Ashman. Exhibit One was admitted into the record.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

**FINDINGS OF FACT:**

Kimberly Romans was employed by Advance Services from September 3, 2013 until January 8, 2014 at Pella Corporation. At the time of hire she received an assignment policy and end of assignment policy. This notified her she must contact the temporary agency within three working days of the end of each assignment to request more work. Failure to do so could negatively impact her unemployment benefits. This requirement was also listed in her job assignment sheet.

The assignment at Pella Corporation ended Friday, January 3, 2014. By Wednesday, January 8, 2014, she had not contacted the Advance Services office.

The record was closed at 9:06 a.m. At 9:11 a.m. the claimant called to provide another phone number. The first phone number she had provided was her cell phone which was not working.

The employer did participate in the fact-finding interview. Kimberly Romans has received unemployment benefits since filing an additional claim with an effective date of December 22, 2013.

### **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.

The claimant had received notice that she was to contact the office of the temporary agency within three days of the end of each assignment to request more work. She failed to do this. Under the provisions of the above Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied 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 employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The notice of the hearing received by the claimant specifically recommends against the use of cell phones to participate in the hearing. The claimant chose to use a cell phone which was not working, even though she had a land line available to her. She did not establish good cause to reopen the hearing. Therefore, the claimant's request to reopen the hearing is denied.

**DECISION:**

The unemployment insurance decision dated January 17, 2014, reference 03, is reversed. Kimberly Romans is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The claimant is overpaid unemployment benefits in the amount of \$607.00. This must be recovered in accordance with the provisions of Iowa law.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs