

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTIN R GONZALEZ
Claimant

APPEAL NO. 12A-UI-13312-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 12/25/12
Claimant: Respondent (5)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 5, 2012, reference 03, decision that allowed benefits in connection with an October 4, 2012 separation. After due notice was issued, a hearing was held on December 6, 2012. Claimant Martin Gonzalez participated. Spanish-English interpreter Anna Pottebaum assisted with the hearing. Michael Payne represented the employer. Exhibit One was received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Advance Services, Inc., is a temporary employment agency with an office in Ames. Martin Gonzalez began performing work for the employer on August 28, 2012. Mr. Gonzalez is a non-English speaking, Spanish-speaking individual. Mr. Gonzalez was hired by Diane Aparejado, a supervisor at Mycogen Seeds in Marshalltown. Ms. Aparejado and another Mycogen Seeds representative represented themselves as representatives of Advance Services, Inc. Mr. Gonzalez had no indication to indicate that Ms. Aparejado or the other Mycogen Seeds representative were not in fact representatives of ASI. No actual ASI representative had any contact with Mr. Gonzalez before or during his assignment at Mycogen Seeds. On October 3, 2012, Ms. Aparejado notified Mr. Gonzalez and others that the assignment would end on October 4, 2012. Ms. Aparejado directed Mr. Gonzalez and others to go to Workforce Development to apply for unemployment insurance benefits and to look for another job. Mr. Gonzalez still had had no actual contact with an ASI representative and did not understand that he needed to contact the employer's office *in Ames*. Mr. Gonzalez had signed and received a policy statement that obligated him to contact ASI no later than three days after the completion of an assignment to request additional work. That document did not contain contact information. About two weeks after the assignment ended, Mr. Gonzalez obtained the telephone number for the ASI Ames office from a friend and called that ASI office in Ames. The

ASI representative in Ames indicated that ASI would contact Mr. Gonzales when work became available.

REASONING AND CONCLUSIONS OF LAW:

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The administrative law judge notes that the employer presented no testimony from any bonafide ASI representative purported to have had contact with the claimant in connection with his employment.

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 evidence in the record indicates that ASI delegated its authority to Mycogen Seeds representatives with regard to hiring and communicating with Mr. Gonzalez about his assignment at Mycogen Seeds and his obligations to ASI in connection with that assignment. While the Mycogen Seeds representative had Mr. Gonzalez sign the policy that obligated him to contact ASI at the end of an assignment, Mr. Gonzalez reasonably concluded he had satisfied that requirement on August 3, 2012, when Ms. Apreciado directed him to go to Workforce Development to apply for benefits and to look for another job. Mr. Gonzalez's October 4, 2012 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Gonzalez is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The Agency representative's November 5, 2012, reference 03, decision is modified as follows. The claimant's October 4, 2012 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs