

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS A WATZEK
Claimant

APPEAL NO. 12A-UI-10530-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 12/25/11
Claimant: Respondent (5)

Section 96.5(1)(j) – Separation From Temporary Employment
Section 96.5(3) – Work Refusal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 28, 2012, reference 05, decision that allowed benefits based on an agency conclusion that claimant Thomas Watzek had good cause for refusing an offer of work on July 31, 2012. After due notice was issued, a hearing was held on September 25, 2012. Mr. Watzek participated. Steve Volle represented the employer. Exhibits One and Two were received into evidence.

ISSUES:

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

Whether the claimant refused a suitable offer of employment without good cause.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Thomas Watzek commenced getting work through Advance Services, Inc. in May 2012 and worked in a single full-time temporary work assignment at Shine Brothers in Spencer. Mr. Watzek completed the assignment on July 31, 2012, when he performed all the work the client business had for him. Mr. Watzek was, at that point, living in Spencer. On the same day the assignment ended, Mr. Watzek reported to Advance Services to inquire about additional work, but the employer had no further assignments for him at that time. A week later, an Advance Services representative contacted Mr. Watzek about a potential job assignment 12 miles north the Spencer. Mr. Watzek participated in an interview for that position, but never received an offer for that position. Mr. Watzek subsequently relocated from Spencer, Iowa, to Lincoln, Nebraska.

On or about August 13, 2012, an Advance Services representative contacted Mr. Watzek about a potential assignment in the Spencer area. When Mr. Watzek mentioned that he had relocated to Lincoln, that ended the discussion about the possible assignment in Spencer. In light of

Mr. Watzek's statement that he had relocated to Lincoln, the discussion never progressed to an offer concerning the potential assignment in the Spencer area.

The employer has an end of assignment notification policy, which reads as follows:

I understand that I am an employee of Advance Services, Inc. Only Advance Services, Inc. or I can terminate my employment. When my assignment ends, I must report to Advance Services, Inc. for my next assignment. I understand that I am expected to complete any assignment I accept. If I do not complete the assignment, then Advance Services, Inc. can assume that I have voluntarily quit. When I am on an assignment, I will not schedule any personal appointments, job interviews, or make personal phone calls during my work hours. It is my obligation to call Advance Services, Inc. within three days after my assignment ends or I will be considered a voluntary quit. Failure to do so could affect my eligibility for unemployment insurance benefits.

I have read this policy and I understand the ramifications of my actions as stated in this policy. I received a copy of this policy for my records.

Mr. Watzek had signed his acknowledgment of the policy and received a copy of the policy on May 23, 2012.

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 question of whether the employer's end of assignment notification policy complies with the letter and spirit of the statute is not critical to the outcome of this case, because the weight of the evidence demonstrates that Mr. Watzek was in contact with the temporary employment agency on the very day the assignment ended and inquired at that time about additional work. The employer had no additional work for the claimant at that time. Accordingly, the July 31, 2012 separation was for good cause attributable to the employer and would not disqualify Mr. Watzek for unemployment insurance benefits. Nor would the separation relieve the employer of liability for benefits.

The employer bristled at the administrative law judge's statement that its end of assignment notification policy did not fully comply with the statute. The statute requires a clear and concise statement of the end of assignment notice requirement that includes a statement of the consequences to the claimant if the claimant fails to make the required contact. The statute requires that notice of the potential loss of a significant entitlement right be presented in a manner that will get the claimant's attention and not distract the claimant from the notice. Some temporary employment agencies are prone to hiding the statutorily required language. That is the very basis for the legislature's requirement that there be a stand-alone policy containing only the clear and concise statement of the end of assignment notice requirement. Inclusion of other policies in the end of assignment notification policy statement, in this administrative law judge's legal judgment, causes the policy statement *not* to comply with the plain language requirements of the statute. This employer's end of assignment notification policy is not by any means the most egregious departure from the statutory requirement. Given how close the statement comes to meeting with the statutory requirements, a reasonable person might question why the employer includes *any* other policy statement on the document.

At least one temporary employment agency gets the statutorily mandated policy statement precisely right. For the benefit of Advance Services, Inc., and based on their request for further

clarification, the administrative law judge provides the following end of assignment notification policy used by Team Staffing Solutions, Inc.

**NOTIFICATION REQUIREMENT
AVAILABILITY FOR WORK ASSIGNMENTS**

I understand and acknowledge that upon completion of an assignment, I must contact the Company and request placement in a new assignment within three (3) working days of completing my last assignment or I will be deemed a voluntary quit and further assignments may not be offered.

I understand that my failure to contact the Company may affect my eligibility for unemployment insurance benefits.

My signature below acknowledges that I have been provided a copy of this policy.

The remaining issues to be addressed are whether the employer made a bona fide offer of employment on August 13, 2012 and whether Mr. Watzek had good cause for refusing the purported offer.

A claimant who fails to accept an offer of suitable employment without good cause is disqualified for benefits until the claimant earns ten times his weekly benefit amount from insured work. See Iowa Code section 96.5(3)(a).

Iowa Administrative Code rule 871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work ... it must first be established that a bona fide offer of work was made to the individual by personal contact ... and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

The weight of the evidence in the record fails to establish that the employer made a bona fide offer of employment on or about August 13, 2012. The evidence indicates instead that the employer contacted Mr. Watzek about a potential work assignment, but that the discussion ended as soon as Mr. Watzek mentioned that he had relocated out of the Spencer area to Lincoln, Nebraska. The evidence fails to establish that the discussion progressed to the point of the employer offering Mr. Watzek work that was his for the taking. Had the discussion progressed to the point where the employer made a bona fide offer of employment, Mr. Watzek's residence in Lincoln would have been good cause for refusing a work assignment in Spencer. See Iowa Admin. Code 871 IAC 24.24(7).

DECISION:

The Agency representative's August 28, 2012, reference 05, decision is modified as follows. The claimant's July 31, 2012 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The separation did not disqualify the claimant for benefits and did not relieve the employer of liability for benefits. The employer did not make a bona fide offer of employment on or about August 13, 2012. Had there been a bona fide offer of employment, the claimant would have had good cause for refusing the offer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw