

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MICHAEL D DEVORE
1001 – 29TH AVE SW
CEDAR RAPIDS, IA 52404-3412

ADVANCE SERVICES INC
C/O TALX UCM SERVICES INC
PO BOX 66864
ST LOUIS MO 63166-6864

Appeal Number: 06A-UI-03736-RT
OC: 02/12/06 R: 03
Claimant: Appellant (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Michael D. DeVore, filed a timely appeal from an unemployment insurance decision dated March 21, 2006, reference 04, allowing unemployment insurance benefits to him because he was otherwise monetarily eligible to receive unemployment insurance benefits, but determined that he had voluntarily left his part-time employment with the employer herein and any wages earned with the part-time employer herein would be removed from his claim for unemployment insurance benefits. After due notice was issued, a telephone hearing was held on April 20, 2006, with the claimant participating. The employer, Advance Services, Inc., did not participate in the hearing because the employer did not call in a telephone number, either before the hearing or during the hearing, where any witnesses could be reached for the

hearing, as instructed in the notice of appeal. The employer is represented by TALX UCM Services, Inc., for the purposes of unemployment insurance claims and that representative is well aware of the need to call in a telephone number in advance of the hearing if the employer wants to participate. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. The claimant was employed by the employer from February 6, 2006 to February 14, 2006. During that period of time the claimant was assigned to Conveyor Engineering. That assignment was long term but ended on February 14, 2006 because Conveyor Engineering no longer had work for the claimant since the claimant had not been trained to wire weld. The claimant was not discharged nor did he quit but he was laid off for a lack of work due to the lack of training in wire welding. The claimant immediately notified the employer, Advance Services, Inc. that night, February 14, 2006 and again the next day February 15, 2006. At that time Advance Services, Inc. had no positions for the claimant. Advance Services, Inc. told the claimant that it would call him if it had a position available. Advance Services, Inc. never called the claimant. The claimant found other employment which began at the end of February of 2006 and the claimant is still employed with that employer.

Iowa Workforce Development records show that the claimant is disqualified to receive unemployment insurance benefits as a result of a disqualifying separation from a prior employer on November 4, 2005 by decision dated March 1, 2006 at reference 01. An administrative law judge affirmed the claimant's appeal of this decision by decision dated March 31, 2006. The claimant filed for unemployment insurance benefits effective February 12, 2006 and applied for two weeks of benefits, for the benefit weeks ending February 18 and 25, 2006. During that time the claimant had not requalified to receive unemployment insurance benefits following his disqualifying separation from the prior employer. Recently the claimant has requalified to receive unemployment insurance benefits because of his earnings from the employer herein and the new employer, but the claimant is presently employed and has not filed for unemployment insurance benefits since the benefit week ending February 25, 2006.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was not.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

Iowa Code section 96.5-1 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.

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 administrative law judge concludes that there is a preponderance of the evidence that the claimant neither voluntarily left his employment with the employer herein, Advance Services, Inc., nor was he discharged by it. Rather, there is a preponderance of the evidence that the claimant was laid off for a lack of work. The employer, Advance Services, Inc., is a temporary employment agency or firm and while employed by them the claimant was assigned to Conveyor Engineering. The evidence further establishes that the claimant was laid off for a lack of work from Conveyor Engineering because he did not have training in wire welding. His lack of training in wire welding should have been known by all concerned. The claimant worked for Conveyor Engineering for a short period of time and then was told by the supervisor of the south plant that he had no other work for the claimant because the claimant did not know how to wire weld. The claimant was told this on or about February 14, 2006. Accordingly, the administrative law judge concludes that the claimant was laid off for a lack of work on February 14, 2006.

The claimant immediately notified the employer herein, Advance Services, Inc., on February 14, 2006 of his layoff and further again notified the employer the next day, February 15, 2006. The evidence further establishes that the employer at that time had no other positions for the claimant. It is clear that the claimant complied with any rules of the employer requiring that an employee of a temporary employment firm notify the temporary employment firm of the completion of the contract within three working days and seek reemployment. Therefore, the claimant is not considered to have voluntarily left his employment. There is also no evidence that the claimant otherwise voluntarily left his employment. If the claimant had been discharged, he would be disqualified only if he was discharged for disqualifying misconduct. The employer has the burden to prove disqualifying misconduct but the employer did not participate in this hearing. There is no evidence of any disqualifying misconduct on the part of the claimant. Accordingly, the administrative law judge concludes that the claimant was laid off for a lack of work on February 14, 2006 and, as a consequence, he is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided he is otherwise eligible.

The administrative law judge notes that at the time the claimant filed for unemployment insurance benefits effective February 12, 2006 and during the time that he filed two weekly claims for the benefit weeks ending February 18 and 25, 2006, the claimant was disqualified to receive unemployment insurance benefits as a result of a separation from a prior employer on November 4, 2005 which separation was disqualifying by decision dated March 1, 2006 at reference 01 and affirmed by a decision by an administrative law judge on March 31, 2006. During the time that the claimant sought benefits he had not requalified to receive unemployment insurance benefits by earning ten times his weekly benefit amount of \$301.00 or \$3,010.00. Therefore, the claimant is not eligible to receive unemployment insurance benefits for the benefits he claimed but only because of the prior disqualifying separation. The administrative law judge notes that even if the wages from the employer herein were not

considered in the claimant's claim, the claimant would be otherwise monetarily eligible to receive unemployment insurance benefits and his weekly benefit amount would not be changed if the wages from the employer herein were excluded but, as noted above, the claimant was, at all relevant times hereto, disqualified to receive unemployment insurance benefits because of his disqualifying separation from the prior employer.

DECISION:

The representative's decision of March 21, 2006, reference 04, is modified. The claimant, Michael D. DeVore, is entitled to receive unemployment insurance benefits insofar as his employment with the employer herein, Advance Services, Inc. is concerned because the claimant was laid off for a lack of work, and this is not disqualifying. Further, since the claimant did not voluntarily leave his employment with the employer herein the wages earned from the employer herein should be included in the computation of unemployment insurance benefits to which the claimant may be entitled. However, Iowa Workforce Development records indicate that at all material times hereto, and especially when the claimant was filing for unemployment insurance benefits, he was disqualified to receive unemployment insurance benefits as a result of a disqualifying separation from a prior employer on November 4, 2005 by decision dated March 1, 2006 at reference 01 and affirmed by an administrative law judge by decision dated March 31, 2006, and he had not requalified to receive unemployment insurance benefits during that time. Accordingly, the claimant is still ineligible to receive unemployment insurance benefits because of that disqualifying separation but not because of his separation from the employer herein, Advance Services, Inc. The claimant has recently requalified to receive unemployment insurance benefits by earning ten times his weekly benefit amount of \$301.00 or \$3,010.00 because of the employment with the employer herein, Advance Services, Inc., and subsequent employment but the claimant is not eligible for benefits now because he is still employed.

cs/tjc