

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALEYDA GARCIA**

Claimant

**APPEAL NO: 13A-UI-13353-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**

Employer

**OC: 10/27/13**

**Claimant: Respondent (2)**

Section 96.5-1-J – Voluntary Quit/Assignment Completion

Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated December 2, 2013, reference 03, that held she voluntarily quit with good cause attributable to her employer on October 22, 2013, and benefits are allowed. A telephone hearing was held on December 23, 2013. The claimant participated. Michael Payne, Risk Management representative, and Mindy Taylor, HR Coordinator, participated for the employer.

**ISSUE:**

Whether the claimant voluntarily quit without good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The employer is a temporary employment firm. The claimant worked for the employer on an assignment at Cyngenta beginning September 6, 2013. She was full-time general labor to work the fall harvest. She signed the employer policy that provides she must seek further work (re-assignment) within three working days from job completion or her failure to do so would be a voluntary quit without good cause.

Claimant completed the assignment on October 22. She told the employer site coordinator Taylor she was not seeking further work because she was moving back to Texas. Claimant left for Texas two weeks later, and this is her current address of record. The Texas address is listed on her unemployment claim.

Claimant has received benefits totaling \$2,056 for a nine-week period from the effective date of her claim through the week ending December 21, 2013. An employer representative participated in department fact finding.

Claimant repeatedly accused the employer of lying about her not asking for further work and telling HR Coordinator Taylor she was moving back to Texas. There were times claimant spoke fluent English. She repeatedly failed to follow the hearing procedure instructions though she was warned about her failure to do so.

### **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 administrative law judge concludes claimant voluntarily quit without good cause attributable to her employer when she completed her assignment on October 22, 2013, and then failed to seek further work within three days in violation of her work agreement.

Claimant's frequent testimony that the employer was lying and interjections of fluent English diminished her credibility. She understood what she was required to do in looking for further work but was not interested because she was moving back to Texas.

Claimant did not dispute she knew the employment agreement condition to seek further work upon job completion. Taylor offered credible testimony claimant stated she was not seeking further work because she was moving back to Texas. This is confirmed by claimant listing her Texas address on her October 27 claim less than a week after completing her job. This makes claimant's testimony she was seeking employment work for two weeks after October 22 as not credible.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The administrative law judge further concludes claimant is overpaid benefits \$2,056 for the nine-week period ending December 21, 2013 due to the voluntary quit disqualification imposed in this matter. Since the employer participated in department fact finding claimant is not granted a waiver and she must repay the overpayment.

**DECISION:**

The department decision dated December 2, 2013 reference 03 is reversed. The claimant voluntarily quit without good cause attributable to her employer on October 22, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. Claimant is overpaid benefits \$2,056.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs