

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCO A SALDANA
Claimant

APPEAL NO. 13A-UI-13246-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 10/20/13
Claimant: Respondent (2-R)

Section 96.5-1-j – Voluntary Leaving Temporary Assignment
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Advance Services, Inc. filed a timely appeal from a representative's decision dated November 27, 2013, reference 02, which held claimant eligible to receive unemployment insurance benefits finding that he was employed on a temporary basis and worked until the completion of the contract for employment. After due notice was provided, a telephone hearing was held on December 19, 2013. Although notified, the claimant did not participate. The employer participated by Mr. Michael Payne, Risk Manager, and Ms. Mindy Taylor, Manager. Employer's Exhibits A and B were received into evidence.

ISSUE:

The issue is whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Marco Saldana was most recently employed by Advance Services, Inc. from September 6, 2013 until October 22, 2013. Mr. Saldana was assigned to work at the Syngenta Seed Company as a general laborer and was paid by the hour.

At the time that Mr. Saldana accepted employment, he signed an agreement to contact the temporary employment service within three working days of the completion of each work assignment. The agreement notified the claimant that failure to do so would be considered to be a voluntary quit and might affect his unemployment insurance benefits. The agreement was on a separate sheet of paper and was provided to the claimant in Spanish at his request.

On October 22, 2013, Mr. Saldana was informed by Syngenta Seed Company that the assignment was completed. Mr. Saldana did not contact Advance Services, Inc. to give them notice of his availability for additional work until October 30, 2013 which is after the three days

agreed upon by the parties at the time that Mr. Saldana began the most recent work assignment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes claimant voluntarily left employment without good cause attributable to the employer.

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 establishes that the claimant signed a specific agreement to contact the temporary employment service within three working days of the completion of each work assignment but did not do so.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be re-assigned to continue working. In this case the claimant gave the employer no notice of his availability within three working days as required and, therefore, is considered to have quit employment without good cause attributable to the employer. Benefits are denied.

The employer participated in the fact finding of this matter.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment and the amount of the overpayment. If there is an overpayment, the claimant is liable to repay that amount because the employer did participate in the fact finding of this matter.

DECISION:

The representative's decision dated November 27, 2013, reference 02, is reversed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, providing that he is otherwise eligible. The issue of whether there has been an overpayment and the amount of the overpayment is remanded to the Claims Division for determination. Claimant is liable to repay any overpayment of unemployment insurance benefits as the employer participated in fact finding in this matter.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs