

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

OLIVIA TORRES

Claimant

APPEAL 18A-UI-10299-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 12/03/17

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)(j) – Temporary Staffing Firm
Iowa Admin r. 871-24.26 – Voluntary Quit with Good Cause

STATEMENT OF THE CASE:

Olivia Torres, Claimant, filed an appeal from the October 4, 2018 (reference 02) unemployment insurance decision that denied benefits because she voluntarily quit work with Advance Services, Inc. when she failed to notify the temporary employment firm within three days of completing her last work assignment. The parties were properly notified of the hearing. A telephone hearing was held on October 30, 2018 at 3:00 p.m. Claimant participated and was represented by Attorney Rob Poggenklass. Spanish interpretation was provided by Paloma (ID number 11274) and Berta (ID number 21864) from CTS Language Link. Employer participated through Gracie Barron, Human Resources Coordinator, and Melissa Lewien, Risk Management. Imelda Lozano was a witness for employer. Employer's Exhibits 1 and 2 were admitted.

ISSUE:

Whether claimant's separation was a voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's last assignment with Advance Services Inc. was full-time, light-duty clerical work in the employer's Slater, Iowa office; the assignment began on June 18, 2018 and ended on September 18, 2018. (Lewien Testimony) The assignment ended because claimant was released to return to regular duty with no restrictions. (Lewien Testimony) Employer informed claimant that the assignment ended on September 19, 2018 via telephone. (Barron Testimony; Claimant Testimony) Claimant responded by asking if she had been laid off or fired; employer explained that claimant had not been fired or laid off but that the assignment was complete. (Barron Testimony) Claimant did not request another assignment during this telephone conversation. (Barron Testimony)

Claimant visited employer's Ames, Iowa office on September 25, 2018 to inquire about a medical appointment related to claimant's worker's compensation claim. (Barron Testimony)

Claimant again asked if she had been fired or laid off, because she wanted a letter for her attorney. (Barron Testimony) Employer told claimant that claimant should have her attorney contact employer's attorney. (Barron Testimony) During the September 25th conversation, claimant did not request another assignment. (Baron Testimony) If claimant had requested another assignment, work was available. (Barron Testimony)

As a temporary employment firm, employer provided claimant with a copy of its End of Assignment Policy with a Spanish language translation. (Lewein Testimony; Exhibit 1) Claimant acknowledged receipt of the policy on September 18, 2017. (Exhibit 1; Claimant Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit without good cause attributable to employer. Benefits are denied.

Iowa Code section 96.5(1)(j) provides:

An individual shall be disqualified for benefits

1. 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. (1) 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.

(2) 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.

Iowa Admin. Code r. 871-24.26(15) 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:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

The claimant has the initial burden of proving that a voluntary quit was for good cause attributable to the employer. *Id.* at § 96.6(2).

It is my duty, as the administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer's version of events to be more credible than the claimant's recollection of those events, because the employer was able to provide detailed information regarding the conversations claimant had with employees. The employees' testimony was consistent regarding the conversations each had with claimant on September 18, 2018 and thereafter. Employees testified that claimant did not ask for a new assignment and only asked questions regarding her worker's compensation claim and whether she had been fired or laid off. Claimant's testimony was less consistent. Claimant first testified that she asked everyone that she spoke with to give her another assignment. Later when claimant was asked if she called regarding why her assignment ended or if she called asking about a new assignment, claimant stated that she called to ask about her worker's compensation case and to get the adjuster's telephone number.

The claimant's assignment at the Slater, Iowa office ended on September 18, 2018. The claimant did not request a new assignment. The claimant has not met her burden of proving "good cause" as an employee of a temporary employment firm.

DECISION:

The October 4, 2018 (reference 02) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs