

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA L MCKINNEY
Claimant

APPEAL NO. 15A-UI-03922-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 03/08/15
Claimant: Respondent (5)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 26, 2015, reference 02, decision that allowed benefits to the claimant, provided she was otherwise eligible, and that held the employer's account could be charged for benefits; based on an Agency conclusion that the claimant had been discharged on March 4, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on May 7, 2015. Claimant Jessica McKinney participated. Michael Payne, Risk Manager, represented the employer and presented additional testimony through Joseph Jones, Onsite Supervisor. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit One into evidence.

ISSUES:

Whether the claimant separated from the employer for a reason that disqualifies her for benefits or that relieves the employer of liability for benefits.

Whether the claimant contacted the employer within three working days of the end of the assignment to request a further assignment after having been notified of her obligation to do so.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Jessica McKinney began her employment with Advance Services, Inc., ASI, in August 2014 and performed work in a single full-time temporary assignment at Pioneer in the vicinity of Hedrick, Iowa. Ms. McKinney started the assignment in August 2014. Ms. McKinney resides in Oskaloosa and commuted to the assignment. Hedrick is located southeast of Oskaloosa. Ms. McKinney's immediate supervisor was Joseph Jones, ASI Onsite Supervisor. Mr. Jones had hired Ms. McKinney and did so at the Pioneer facility.

Ms. McKinney last performed work in the assignment on Wednesday, March 4, 2015. On that day, Ms. McKinney observed that someone had posted a list of ASI employees whose assignments would be continuing. Ms. McKinney observed that her name was not on that list. On that day, Mr. Jones told a gathering of ASI employees, including Ms. McKinney, that Pioneer's needs had changed and that assignments would be ending. Not all assignments would be ending on the same day.

On Friday, March 6, 2015, Mr. Jones telephoned Ms. McKinney to confirm that she understood her assignment was ending. Mr. Jones asked whether Ms. McKinney wanted to be on a list of ASI employees that would perform work that weekend. Ms. McKinney indicated she wanted to be on the list. Mr. Jones asked Ms. McKinney whether she wanted to return to work at Pioneer when Pioneer again needed temp workers. Ms. McKinney told Mr. Jones that she did wish to return to work at Pioneer.

ASI has an office in Pella. Ms. McKinney did not obtain her Pioneer assignment through the Pella office and was unaware that ASI had an office in Pella. Mr. Jones never mentioned the Pella office to Ms. McKinney.

In August 2014, the employer had Ms. McKinney sign an End of Assignment Policy that obligated her to contact ASI within three working days after the end of an assignment to request a further assignment or be deemed to have voluntarily quit. The policy further indicated that failure to make the required contact would affect Ms. McKinney's eligibility for unemployment insurance benefits. Ms. McKinney received a copy of the policy she signed.

Ms. McKinney established a claim for unemployment insurance benefits that was effective March 8, 2015 and received \$696 in benefits for the eight-week period between March 8, 2015 and May 2, 2015.

On March 18, 2015, a Workforce Development claims deputy held a fact-finding interview to address the claimant's separation from the employment. The employer participated through Steve Volle.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.26(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 employer's end of assignment notification policy complies with the requirements of the statute. Ms. McKinney signed her acknowledgment of the assignment and received a copy of the document she signed. Accordingly, Ms. McKinney was obligated to contact ASI within three working days of completing the assignment to request additional work. Ms. McKinney completed her assignment on March 4, 2015. The weight of the evidence indicates that that Mr. Jones spoke to Ms. McKinney on March 6, 2015 to confirm her understanding that the assignment was ending and to see whether she would be willing to work the next couple days if needed. Ms. McKinney told Mr. Jones she was willing to work. Ms. McKinney also told Mr. Jones that she wanted to return for a new assignment at Pioneer. Ms. McKinney had no idea the employer had an office in Pella that she was supposed to contact. The employer had not put her on notice of that she needed to contact the Pella office if she wanted additional work. Ms. McKinney notified the only ASI contact she knew, Mr. Jones, regarding her desire for additional work. The contact satisfied the requirement of the statute.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. McKinney's March 2015 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Ms. McKinney is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. McKinney.

DECISION:

The March 26, 2015, reference 02, decision is modified as follows. The claimant's March 2015 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/can