

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALEXIS R IRON SHELL
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 21A-UI-10315-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/23/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit from Employment
Iowa Code § 96.5(1)j – Voluntary Quit / Temporary Unemployment
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

On April 12, 2021, the claimant, Alexis Iron Shell, filed an appeal from the April 8, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit effective February 26, 2021, by failing to come to work for three consecutive shifts and failing to notify the employer. The parties were properly notified of the hearing. A telephonic hearing was held at 4:00 p.m. on Monday, June 28, 2021. The claimant, Alexis R. Iron Shell, participated. The employer, Advance Services, Inc., participated through Melissa Lewien, Risk Management. Claimant's Exhibits B, C, and D and Employer's Exhibit 1 were received and admitted into the record without objection. Claimant's Exhibit A was admitted over objection.

ISSUES:

Did the claimant quit temporary assignment by not reporting for additional work assignments within three business days of the end of the last assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked for employer Advance Services, Inc., as a temporary employee. Her first assignment with the employer began August 14, 2018.

Claimant began an assignment on August 3, 2020, working full-time hours as a production worker at Corteva. On February 23, 2021, claimant was informed by on-site coordinator Laura Martinez that she would be laid off on Friday, February 26, 2021.

Claimant contacted Martinez via text message on Monday, March 1, 2021, to ask for an additional assignment from the employer. As Martinez is only an on-site coordinator, she does not do assignment placing. Therefore, Martinez directed claimant to contact the employer's Ames office. (Claimant's Exhibit C) Claimant then called the Ames office at 8:15 a.m. and had

a three-minute call. (Claimant's Exhibit A) The employer has no record of claimant contacting the Ames office and requesting an additional assignment.

The employer maintains a written policy regarding the actions an employee needs to take at the end of a job assignment. This policy states in relevant part: "I understand that it is my responsibility to contact Advance Services, Inc. within (3) working days after my assignment ends to request further assignments or I will be considered to have voluntarily quit." This policy cautions that failure to comply may affect eligibility for unemployment insurance benefits. Claimant signed this policy, indicating she read the policy and understood it, on August 15, 2020. (Employer's Exhibit 1)

Lewien provided information regarding the volume of work that has been available through the employer's Ames office. During the workweek ending February 26, 2021, the Ames office had 35 active customers/client worksites and employed 181 active employees. During the workweek ending March 5, the office had 37 active customers. During the workweek ending March 12, 2021, the Ames office employed 194 active employees. While work assignments and workloads varied, work was consistently available.

Claimant has applied for two jobs since her layoff in late February 2021. She applied for a demolition-employee-in-training position on the Meskwaki Settlement. She also applied for a position with Amazon. The rest of the time, claimant was holding out for employment with the employer through its Ames office. Claimant's record of weekly continued claims reflects that she consistently reported making zero job contacts each week when she filed for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation was without good cause attributable to the employer. Benefits are withheld.

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.

Iowa Admin. Code 871—24.26(15) provides:

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.

It is the duty of the administrative law judge as 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 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. *Id.* 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 believable evidence; 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. *Id.*

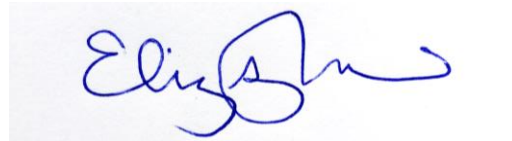
After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds that while claimant's exhibits establish she called the Ames Advance Services office on March 1, 2021, claimant has not established through credible testimony that she made the requisite request for an additional assignment. Claimant's insistence that she followed up "lots of times" but she does not know who she spoke to on any of the occasions undermines the believability of her statements. Lewien presented credible statements regarding the volume of work available through the Ames office, and it is difficult to believe that an office that took on 13 active employees in two weeks could not find any work for claimant. The administrative law judge does not believe claimant asked the Ames office for an additional assignment.

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 the temporary assignment. In this case, while an employee of the employer (Martinez) knew of claimant's availability, claimant needed to alert someone with the power to give her additional assignments. Claimant has not established that she did this. Benefits must be withheld.

As claimant's separation is disqualifying, the issue of whether claimant is able to and available for work is moot.

DECISION:

The April 8, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant separated from employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Elizabeth A. Johnson
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July 9, 2021
Decision Dated and Mailed

lj/mh