

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

REYNA E PORTILLO
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 15A-UI-05826-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/01/15
Claimant: Appellant (1)

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 12, 2015, (reference 03) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on June 24, 2015, and was concluded on June 25, 2015, due to unavailability of an interpreter due to a weather-related power outage. Claimant participated through interpreter Olga Esparza and was represented by Dennis McElwain, Attorney at Law. On June 24, employer participated through risk manager, Michael Payne and human resources coordinator, Raquel Palomino. On June 25, employer participated through risk manager, Steve Volle and human resources coordinator, Raquel Palomino. Other potential witnesses did not participate on June 24. Office Manager Jim Stein participated on June 25. Claimant's Exhibits A and B were received. Employer's Exhibit 1 was received.

ISSUE:

Did claimant quit 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 was employed full time as a candy production worker assigned at Palmer Candy from March 17, 2015. Her last day of work was April 16, 2015. The assignment ended on April 16, 2015, and the employment ended April 20, 2015, after she failed to report the end of the assignment or seek another pursuant to the employer's policy. (Employer's Exhibit 1) The Palmer supervisor told her the assignment had ended because she was no longer needed. On April 17, 2015, she spoke to Jim Stein at Advance Services and asked for her paycheck stub but did not tell him the Palmer assignment had ended or ask for more work. She did not use an interpreter for that communication. Advance Services employees Marisol Retrig and Palomino were her usual interpreters. Stein found out the assignment had ended on April 27 when he called Palmer to ask why he had not received hours for the claimant for that pay period. Claimant's next communication with the employer was on May 4, 2015, when she called Palomino asking for work.

REASONING AND CONCLUSIONS OF LAW:

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

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 § 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 § 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 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 reassigned and continue working. The plain language of the statute allows benefits for a claimant “who notifies the temporary employment firm of completion of an employment assignment *and* who seeks reassignment.” (Emphasis supplied.)

Stein’s testimony is credible that he did not know about the assignment end until he called Palmer inquiring why claimant did not have hours for that pay period. In this case, the claimant did not notify the employer of the end of the assignment, her availability or request another assignment according to the employer’s reporting policy and, therefore, is considered to have quit the employment without good cause attributable to the employer.

DECISION:

The May 12, 2015, (reference 03) unemployment insurance decision is affirmed. The claimant’s separation was not attributable to the employer. Benefits are withheld until such time as she works in and has been paid for wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css