

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**FELIX R AVALOS**

Claimant

**APPEAL 18A-UI-10956-LJ**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**

Employer

**OC: 04/29/18**

**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 2, 2018, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant quit his temporary employment when he failed to report back within three business days of his last assignment ending. The parties were properly notified of the hearing. An in-person hearing was held in Des Moines, Iowa, on December 5, 2018. The claimant, Felix R. Avalos, participated and was represented by Philip F. Miller, Attorney at Law. The employer, Advance Services, Inc., participated via telephone through Melissa Lewien, Risk Management. Spanish/English interpreters Rafael of International Translation Service, L.L.C. and Harley (ID Number 6866) from CTS Language Link provided interpretation services for the hearing. Claimant's Exhibits A and B and Employer's Exhibits 1, 2, and 3 were received and admitted into the record. Employer's Exhibits 1, 2, and 3 were admitted into the record over objections that claimant had not seen them before, that claimant had not signed them, and that claimant was not present when it was filled out or completed. Claimant was also granted standing objections and motions to strike as to hearsay.

**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, most recently as a corn sorter assigned to Pioneer, beginning August 20, 2018. The employer maintains an End of Assignment Policy. (Exhibit 2) Under the End of Assignment Policy, an employee is required to contact the employer within three working days after an assignment ends to request a new assignment or he will be considered to have voluntarily quit his employment. This policy is maintained in both English and Spanish. Claimant read the Spanish copy of this policy into the record during the hearing.

Claimant came to the employer's offices on August 16 with his niece. Both claimant and his niece intended to apply for jobs that day. However, due to a power outage, only claimant's niece completed an application that day. Claimant came back the next day, again with his niece, and he applied for a job. Claimant's niece helped him with the application, as she operates a computer better than claimant. At that time, claimant also completed on-boarding paperwork, including a Spanish copy of the End of Assignment Policy. (Exhibit 1) Claimant's electronic signature and his social security number appear on the signature line and social security number line of the Spanish End of Assignment Policy. (Exhibit 1) Martinez was working both August 16, and 17<sup>th</sup>. She was available to answer questions for claimant or his niece while he filled out this policy as well as the application, but she was not permitted to help them complete the application or the policy. Neither claimant nor his niece asked Martinez questions while filling out the application on August 17. Claimant, claimant's niece, and Martinez also discussed a worker's compensation issue that claimant had outstanding from another employer. Martinez called claimant afterward and told him there was no issue with employing him, given that outstanding worker's compensation issue. The employer also sent claimant paperwork related to this issue.

Claimant last reported to work on October 14, 2018. That day, he worked five hours and then the supervisor told him and all the workers that the assignment was completed and the workers' work was done. Claimant has also been told that the assignment was ending by Martinez. At that point, claimant said thank you, grabbed his jacket, and went home. He spoke to Martinez and Patty, both of whom were in the Advance Services office located at Pioneer. Claimant thanked them for the opportunity to work there. He did not ask them for an additional assignment. Several weeks later, claimant had a conversation with Maria Garcia, another Advance Services employee, about another assignment. He met with Garcia in the Iowa Workforce Development office to discuss a new assignment available in Grinnell. Claimant was not qualified for this assignment due to his limited English skills.

## **REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code §96.5(1) 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.

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. (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.

(3) For the purposes of this lettered paragraph:

(a) "*Temporary employee*" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "*Temporary employment firm*" means a person engaged in the business of employing temporary employees.

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 assignment *and* who seeks reassignment." (Emphasis added.)

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 the employer's testimony more credible than claimant's testimony. The administrative law judge found Laura Martinez to be credible, as her testimony was detailed and she seemed to have specific memories of claimant and his niece coming to the Advance Services office to apply for work. The administrative law judge also believes Martinez's statement that she is not permitted to – and therefore would not – assist any applicant with his application for employment by filling it out for him. The administrative law judge finds claimant,

either himself or through his niece acting as his agent, electronically signed the End of Assignment Policy. Therefore, claimant is held responsible for understanding and following this policy.

In this case, claimant received and signed the End of Assignment Policy. The employer had notice of the claimant's availability because it notified him of the end of the assignment. Claimant did not request another assignment with the employer within three business days of this assignment ending. Therefore, he is considered to have quit the employment without good cause attributable to the employer.

**DECISION:**

The November 2, 2018, (reference 02) unemployment insurance decision is affirmed. Claimant separated from employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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