

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SULYVETTE RODRIGUEZ GARCIA
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 24A-UI-03296-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/18/24
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Advance Services Inc, the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) March 21, 2024 (reference 01) unemployment insurance (UI) decision. IWD found Ms. Rodriguez Garcia eligible for REGULAR (state) UI benefits because IWD concluded she worked for the employer, a temporary staffing agency, until her assignment ended on February 12, 2024 and she notified the employer within three working days of her ending of her assignment. On March 27, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Ms. Rodriguez Garcia for a telephone hearing scheduled for April 17, 2024.

The administrative law judge held a telephone hearing on April 17, 2024. The employer participated in the hearing through Melissa Lewien, risk manager and Palmer Hayes, recruiter. Ms. Rodriguez Garcia did not participate in the hearing. The administrative law judge took official notice of the administrative record and admitted Employer's Exhibit 1 as evidence.

The administrative law judge concludes Ms. Rodriguez Garcia is not eligible for UI benefits based on how her job ended with this employer, IWD overpaid her \$1,004.00 in UI benefits, and she is required to repay these benefits back to IWD.

ISSUE:

Did Ms. Rodriguez Garcia voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Rodriguez Garcia began working for the employer on October 3, 2022. She worked as a full-time production laborer assigned to work at Burkes Outsourcing. Her employment ended on February 12, 2024.

¹ Appellant is the person or employer who appealed.

On February 12, Burkes told Ms. Rodriguez Garcia that her assignment was over and laid her off. The employer's policy provides that an employee is required to ask the employer for new work within three working days of the end of an assignment and if the employee does not do so the employee is deemed to have voluntarily quit. The policy is in writing, and Ms. Rodriguez Garcia acknowledged receiving a copy of the policy on April 28, 2023.

On February 20, Burkes told the employer that it had ended Ms. Rodriguez Garcia's assignment on February 12. Also, on February 20, Ms. Rodriguez Garcia contacted the employer and asked for a new assignment.

IWD paid Ms. Rodriguez Garcia REGULAR (state) UI benefits in the total gross amount of \$1,004.00 for 4 weeks between February 18, 2024 and March 16, 2024. The employer participated in the fact-finding interview through Steve Volle, risk management director.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 1) Ms. Rodriguez Garcia's separation from employment on February 12, 2024 was without good cause attributable to the employer, so she is not eligible for UI benefits, 2) IWD overpaid Ms. Rodriguez Garcia \$1,004.00 in UI Benefits, and 3) Ms. Rodriguez Garcia is required to repay these benefits back to IWD.

Ms. Rodriguez Garcia's Separation from Employment on February 12, 2024 Was Without Good Cause Attributable to The Employer. So She Is Not Eligible for UI Benefits

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.

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 work force 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 language of the statute allows benefits for a claimant who notifies the temporary employment firm of completion of an assignment and who seeks reassignment.

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.

In this case, Ms. Rodriguez Garcia contacted the employer on February 20, which was more than 3 business days after the end of her assignment. Ms. Rodriguez Garcia's separation from employment is considered a quit without good cause attributable to the employer. Ms. Rodriguez Garcia is not eligible for UI benefits based on how her job ended with this employer.

IWD Overpay Ms. Rodriguez Garcia \$1,004.00 in REGULAR (state) UI Benefits.
And She is Required to Repay These Benefits Back to IWD

Iowa Code §96.3(7) provides, in relevant part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Admin. Code r. 871-24.10 provides, in relevant part:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of

discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

Since Ms. Rodriguez Garcia is not eligible for UI benefits based on how her job ended with this employer, she is not eligible for the UI benefits IWD already sent her. IWD overpaid Ms. Rodriguez Garcia REGULAR (state) UI benefits in the total gross amount of \$1,004.00 for 4 weeks between February 18, 2024 and March 16, 2024. Since the employer participated in the fact-finding interview, Ms. Rodriguez Garcia is required to repay these benefits back to IWD.

DECISION:

The March 21, 2024 (reference 01) UI decision is REVERSED. Ms. Rodriguez Garcia's separation from employment with the employer on February 12, 2024 was without good cause attributable to the employer. Ms. Rodriguez Garcia is not eligible for UI benefits until she has worked in and been paid wages for insured work equal to ten times her weekly UI benefit amount, as long as no other decision denies her UI benefits.

IWD overpaid Ms. Rodriguez Garcia REGULAR (state) UI benefits in the gross amount of \$1,004.00 for 4 weeks between February 18, 2024 and March 16, 2024. Since the employer participated in the fact-finding interview, Ms. Rodriguez Garcia is required to repay these UI benefits back to IWD.



Daniel Zeno
Administrative Law Judge

April 18, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with this decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.