

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KELLY M BLACKMAN
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 15A-UI-01863-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/18/15
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the February 9, 2015 (reference 01) unemployment insurance decision that allowed benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on March 12, 2015. Claimant responded to the hearing notice instructions but was not available at the number provided when the hearing was called and did not participate. Employer participated through risk manager Michael Payne and human resources coordinator Sarah Rhoten. The administrative law judge took official notice of the administrative record, including fact-finding documents. Employer's Exhibits One and Two were received. Claimant called after the hearing record had been closed. She was not available when the hearing was called because she became busy and forgot about the hearing.

ISSUES:

Should the hearing record be reopened?

Did the claimant quit by not reporting for an additional work assignment 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 assigned as a temporary full-time assembler at Pella Corporation on March 21, 2014 and was separated from employment on January 20, 2015 when the assignment ended. Claimant had spoken to Rhoten on January 19, 2015 while she was home with an ill child, about needing a new assignment and understood that the employer would contact her when work became available (Administrative Record, Fact-finding interview notes). She contacted Rhoten again on January 28 when she asked for copies of her paystubs. On December 22, 2014 in meeting about the end of the assignment the employer provided verbal instructions about the end of the assignment. The employer provided a copy of the written policy to claimant at orientation on March 21, 2014 on the same page with another policy that says only Advance Services can terminate the assignment so failure to complete an assignment is considered a voluntary leaving of employment (Employer's Exhibit One).

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's request to reopen the hearing record should be granted or denied.

Iowa Admin. Code r. 871-26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

Although the claimant may have intended to participate in the hearing, did not make herself available for the hearing and did not return the ALJ's message until after the hearing record was closed. She did not establish good cause to reopen the hearing record and the request is denied.

For the reasons that follow, the administrative law judge concludes the claimant's separation was with 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 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 purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment. Since the employer knew of the end of the assignment and claimant contacted the employer on January 19, the day before the assignment ended within three working days of the notification of the end of the assignment, requested reassignment, and there was no work available, benefits are allowed, provided she is otherwise eligible. Furthermore, claimant's recollection at the fact-finding interview that the employer would notify her of other work infers there was no further work available at the time. Accordingly, claimant was reasonable to opt to look for work elsewhere or to report for additional work when she did. Even were the employer's inconsistent fact-finding interview statement and appeal hearing testimony resolved in its favor, it does not have a policy that complies with the specific terms of Iowa Code § 96.5(1)j since two separate and distinct policies are included on one form.

DECISION:

The February 9, 2015 (reference 01) unemployment insurance decision is affirmed. The record shall not be reopened. The claimant's separation from employment was attributable to the employer. The employer had adequate knowledge about the conclusion of the claimant's assignment and the request for more work but had no further work available at the time. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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