

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KABBA WILLIAMS**

Claimant

**APPEAL 18A-UI-09552-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**

Employer

**OC: 08/19/18**

**Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

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

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The appellant/employer filed an appeal from the September 12, 2018 (reference 03) unemployment insurance decision that allowed unemployment insurance benefits to the claimant based upon his separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on October 3, 2018. The claimant, Kabba Williams, participated personally. The employer, Advance Services Inc., participated through witnesses Melissa Lewien and Kelsey Plueger. Employer's Exhibits 1 through 4 were admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

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

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was a temporary employee of a temporary employment firm. Claimant began his employment on March 2, 2018. On February 28, 2018, the claimant completed paperwork with the employer, including signing the employer's end of assignment policy. See Exhibit 4. A copy of this end of assignment policy was not given to the claimant at any point prior to his separation.

Claimant received his job assignment from the employer to work full-time at Bartech Monsanto. Claimant's job title was seed technician. This job assignment began March 2, 2018 and ended on August 22, 2018. The reason the job assignment ended was because the job had been completed.

Ms. Plueger notified the claimant by telephone on August 23, 2018 to inform him that his job assignment with Bartech Monsanto had ended. Claimant was upset when he learned his job assignment had ended because he had no advance notice as to an end date of the assignment. However, claimant worked as a temporary employee and his assignment could be ended at any time. During the August 23, 2018 telephone call, claimant expressed to Ms. Plueger that he needed another job and requested additional work.

Claimant then went into the employer's office on August 24, 2018 to return his badge, as Ms. Plueger had requested he do. Claimant requested additional work from Ms. Plueger in person on August 24, 2018 as well. He was told no further work was available and Ms. Plueger gave him a business card of a contact who may be hiring workers. Ms. Plueger testified that she gave claimant this business card to try to help him find another job.

Claimant received benefits of \$2,027.00 for the six weeks between August 19, 2018 and September 29, 2018. Employer did participate in the fact-finding interview personally and by providing documentation.

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

For the reasons that follow, the administrative law judge concludes the separation was with good cause attributable to the employer. Benefits are allowed.

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. (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 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.

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.

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 claimant's testimony is more credible than Ms. Lewien's testimony. Further, Ms. Plueger credibly testified that she gave claimant a business card of an employer contact in order to help him find another job. It was clear that claimant had requested additional work on August 23, 2018 and August 24, 2018.

Further, claimant's testimony that he did not receive a copy of the written end of assignment policy is credible. No witness with first-hand knowledge testified that a copy of the end of assignment policy was actually given to the claimant when he signed it.

The purpose of Iowa Code § 96.5-(1)j 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 claimant contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and there was no work available, no disqualification is imposed. The separation is not disqualifying. Benefits are allowed, provided claimant is otherwise eligible. The employer's account may be charged for benefits paid. Because benefits are allowed, the issue of overpayment is moot.

**DECISION:**

The September 12, 2018 (reference 03) unemployment insurance decision is affirmed. The claimant's separation from employment was not disqualifying. Benefits are allowed, provided claimant is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs