

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

MICHAEL M MANSHEIM
Claimant

APPEAL NO. 19A-UI-02406-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 02/03/19
Claimant: Appellant (2)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

Iowa Administrative Code Rule 871-24.26(19) – Fulfilled Contract of Hire

STATEMENT OF THE CASE:

Michael Mansheim filed a timely appeal from the March 14, 2019, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Mansheim voluntarily quit on February 6, 2019 without good cause attributable to the employment. The deputy concluded that Mr. Mansheim had failed to notify the temporary employment agency within three working days of completing an assignment despite being told in writing of his obligation to make such contact. Mr. Mansheim required an in-person hearing. After due notice was issued, an in-person hearing was held on April 9, 2019 at the Waterloo IowaWORKS center. David Mansheim represented Michael Mansheim and presented testimony through Michael Mansheim and subpoenaed witness Tiffany Walters. Melissa Lewien represented the employer. American Sign Language Interpreter Amy Cook of Deaf Services Unlimited assisted with the hearing. Ms. Lewien participated by telephone. Exhibits 1, 2, A, B and C were received into evidence.

ISSUE:

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Advance Services, Inc. (ASI) is a temporary employment agency. Michael Mansheim established his employment with ASI in August 2018 and worked in a series of three temporary work assignments at a Pioneer Hi-Bred International facility in Reinbeck. Mr. Mansheim is deaf. Mr. Mansheim utilizes the assistance of a sign language interpreter when one is available. Mr. Mansheim has a Cochlear implant. Mr. Mansheim is skilled at lip reading. Mr. Mansheim often communicates in writing.

Mr. Mansheim's most recent work assignment began in October 2018. The assignment was full-time. Mr. Mansheim was assigned to the first shift and his work hours were 7:00 a.m. to 5:00 p.m. Mr. Mansheim's work days varied. The assignment ended on February 1, 2019, when Mr. Mansheim had completed all the work that ASI and Pioneer had for him in the

assignment. At 2:13 p.m. on January 30, 2019, ASI On-site Human Resources Coordinator Tiffany Walters notified Mr. Mansheim via text message that the assignment would be ending. Ms. Walters wrote:

Hi Michael I just got notified that your last day will be this Friday. They are only keeping 4 people. It has nothing to do with your performance or attendance because both were more than great. Thank u for always being able for me to count on. I greatly appreciate it. And, the 1st chance I get if u will I plan on calling u back. This happens every year but this year its' a little early. I hope u will want to come back. Thanks Michael.

Mr. Mansheim did not respond via text message. Later in the shift, Ms. Walters and Mr. Mansheim spoke in person. During that contact, Mr. Mansheim asked Ms. Walters whether ASI had other work for him at the Pioneer facility or elsewhere. Ms. Walters told Mr. Mansheim that ASI had no other work for him at that time.

On the morning of February 1, 2019, Ms. Walters created incomplete documentation of her January 30, 2019 contact with Mr. Mansheim in ASI's electronic communication log as follows:

I was asked on Wed Jan 30th to let Michael know that his last day of his current assignment will be Fri Feb 1st. Michael is deaf so if we are not here at work the only way we can communicate is via text messaging. He thanked me. The plant shut down production Wed 2 12:45PM because Alliant Energy asked them to help save energy. I had to contact the employees ending assignments knew so Pioneer could post the new schedule Thurs AM

Ms. Walters did not document Mr. Mansheim's January 30 inquiry regarding a further work assignment. On February 1, 2019, after Mr. Mansheim completed his final shift, he again spoke with Ms. Walters regarding his desire for a further assignment. Ms. Walters did not document this contact.

Ms. Walters' next entry in the ASI communications log is dated February 6, 2019. On that day, Ms. Walters wrote: Michael completed assignment on 02/01/2019. After the contact on February 1, 2019, Mr. Mansheim next made contact with ASI on February 11, 2019, at which time he inquired about his W-2 tax form.

ASI has an end of Assignment Policy that states as follows:

I understand that it is my responsibility to contact Advance Services, Inc. within three working days after my assignment ends to request further assignments or I will be considered to have voluntarily quit. Failure to do so could affect my eligibility for unemployment insurance benefits.

I have read these policies and I understand the ramifications of my actions as stated in these policies. I received a copy of these policies for my records.

The End of Assignment Policy was included in the 19 or more pages of material that Ms. Walters had Mr. Mansheim review on a notebook computer on September 10, 2018. Mr. Mansheim read the policy and checked the box on the computer screen to "electronically sign" his acknowledgement of the policy. Despite the text reference to receiving a copy of the End of Assignment policy, the employer did not in fact provide Mr. Mansheim with a copy of the policy he had "electronically signed."

At some point subsequent to Mr. Mansheim's separation from ASI, ASI terminated the employment of Ms. Walters.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

The weight of the evidence in the record establishes that Mr. Mansheim completed a temporary full-time work assignment on February 1, 2019 and that he made a verbal inquiry about additional work on January 30 and February 1, 2019. Ms. Walters' failure to document the inquiries in the employer's communication log is not attributable to Mr. Mansheim. Though the text of ASI End of Assignment Policy conforms with the requirements set forth at Iowa Code section 96.5(1)(j), the employer did not comply with the statutory requirement that the employer provide Mr. Mansheim with a copy of the policy. For that reason, neither the policy nor Iowa Code section 96.5(1)(j) may serve as a basis for disqualifying Mr. Mansheim for unemployment insurance benefits. Because the Code subsection does not apply, Mr. Mansheim fulfilled the contract of hire by completing the Pioneer assignment on February 1, 2019 and was not obligated to seek additional work through ASI. Regardless, the weight of the evidence establishes that Mr. Mansheim was at all relevant times motivated to work and did indeed make a timely request for additional work on January 30 and February 1, 2019. The employer representative's assertion that the employer is somehow a detached, objective participant in matters related to Mr. Mansheim's employment and his unemployment insurance claim rings hollow.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Mansheim's February 1, 2019 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Mansheim is eligible for benefits provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to Mr. Mansheim.

DECISION:

The March 14, 2019, reference 01, decision is reversed. The claimant's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The separation was effective February 1, 2019. The claimant is eligible for benefits provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs