

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PHILLIP L GAETA**

Claimant

**APPEAL NO. 16A-UI-11815-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**

Employer

**OC: 01/31/16**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Phillip Gaeta filed a timely appeal from the October 28, 2016, reference 03, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Mr. Gaeta voluntarily quit the employment on October 8, 2016, by failing to contact the temporary employment agency within three working days of completing an assignment to request a new assignment despite being notified of his obligation to make such contact. After due notice was issued, a hearing was held on November 16, 2016. Mr. Gaeta participated. Melissa Lewien, Risk Management, represented the employer and presented additional testimony through Norma Martinez. Exhibits B, C and D 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: Phillip Gaeta performed work for Advance Services, Inc. (ASI) in a single, full-time temporary work assignment at a Syngenta facility in Lone Tree, Iowa. The assignment started in July 2016 and ended on October 5, 2016, when Syngenta ended the assignment without advising Mr. Gaeta or ASI of the reason for ending the assignment. On October 5, 2016, ASI Onsite representative Norma Martinez notified Mr. Gaeta that the assignment was ended. Mr. Gaeta immediately asked about an additional work assignment in another area at the Syngenta facility. Ms. Martinez immediately checked with that area and immediately reported back to Mr. Gaeta that the area had all the workers it needed. Mr. Gaeta initiated contact with Ms. Martinez by telephone and by text message on October 6 and again on October 7. The telephone contact included further inquiry about additional work assignments. The text messaging included correspondence regarding Mr. Gaeta's final check and his request for a copy of his ASI application so that he could use it as he looked for other work. Ms. Martinez did not document any of this contact with Mr. Gaeta. Mr. Gaeta later sent a text message to Ms. Martinez on October 19, 2016. Mr. Gaeta was again inquiring about work assignments. Ms. Martinez did

not respond to the October 19, 2016 inquiry, but documented the inquiry. Mr. Gaeta again inquired about work via text message on October 25, 2016. Only then did Ms. Martinez respond. Ms. Martinez directed Mr. Gaeta to contact the ASI in Mount Pleasant.

When Mr. Gaeta applied for work through ASI, he did so at the Syngenta facility. In connection with that process, Mr. Gaeta signed a number of documents. These included a stand-alone policy document that obligated him to contact ASI within three working days of the end of a work assignment to request an additional assignment. Neither Ms. Martinez nor Mr. Gaeta has a clear memory regarding whether Mr. Gaeta was actually provided with a copy of the document he signed.

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

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.

The weight of the evidence in the record establishes that Mr. Gaeta completed the Syngenta work assignment on October 5, 2016 and immediately requested another assignment. Mr. Gaeta testified candidly, with specificity, and credibly regarding that inquiry, the steps Ms. Martinez took to check on another assignment and the response that same day that there was not another assignment available. Even if the administrative law judge assumes that Mr. Gaeta received a copy of ASI's end of assignment notification requirement, Mr. Gaeta complied with the policy and with the statute through his October 5, 2016 inquiry. The weight of the evidence establishes that Mr. Gaeta continued to make further inquiry about additional work over the next couple of days. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Gaeta's October 5, 2016 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Gaeta is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Gaeta.

During the appeal hearing, the administrative law judge noted the obvious coloring of the employer's evidence to serve only the employer's ends. Such an approach to presenting evidence is unwise and violates the oath taken at the time of the hearing. During the hearing, it became apparent that the employer's record keeping in connection with Mr. Gaeta's assignment coming to an end and his request for further work conveniently omitted any documentation of the multiple discussions with Mr. Gaeta on October 5-7, 2016. Ms. Martinez's testimony in response to Mr. Gaeta's questions concerning his interactions with her and discussion with her during the period of October 5-7 was simply not credible. The appeal hearing should not be viewed by a party as an opportunity to pull the wool over the eyes of the adjudicator.

**DECISION:**

The October 28, 2016, reference 03, decision is reversed. The claimant's October 2016 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs