

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RUBEN ALCALA MEZA
Claimant

ADVANCE SERVICES
Employer

APPEAL NO. 14A-UI-03763-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/04/13
Claimant: Respondent (2)

Iowa Code § 96.5-1-j - Voluntary Quit of Temporary Employment
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Advance Services, Inc. (employer) appealed an unemployment insurance decision dated April 7, 2014, (reference 03), which held that Ruben Alcala Meza (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 29, 2014. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Steve Volle, Risk Manager. Employer's Exhibits One and Two were admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment agency and the claimant was hired on September 3, 2013. At the time of hire, he signed an assignment policy which advised him of the requirement to check in for additional work after the completion of an assignment. The policy the claimant signed was in Spanish. The employer requires employees to check in within three working days after an assignment ends to provide the employer notification of the claimant's availability and failure to do so would be considered as a voluntary quit. The claimant was given a copy of the assignment policy, which is not part of the application or contract of employment.

The claimant was assigned to Mycogen Seeds in Marshalltown on September 3, 2013, and although he transferred to a couple other jobs within the assignment, he continued working until February 26, 2014. Supervisor Bree Van Sickle attempted to call the claimant on February 26, 2014, but the phone number he had provided was disconnected. Apparently the claimant had

been informed by a supervisor from Mycogen that the assignment was over because he did not return to work after that date. The employer never heard from him after that and considered him to have voluntarily quit as of March 3, 2014. Ms. Van Sickle attempted to reach the claimant again on March 15, 2014, but the number was still disconnected. Ms. Van Sickle again called the claimant on April 1, 2014, and the call went through this time. The claimant answered and Ms. Van Sickle asked if he was looking for work. He said that he would contact the employer if he was looking for work but has failed to do so.

The claimant provided a written statement for the fact-finding interview that was dated on March 3, 2014. The statement is addressed to Advance Services and it indicates that the claimant is aware that it is his third day after his last day of work and he states if the employer has work to call him at 641-351-1955. The employer witness testified they received no such letter and that the number provided in the letter is different than the contact number they have for the claimant. The claimant told the fact-finder that a "Mrs. Marina" typed the letter and "she was from Advance Services in Ames." He said that he could not contact the employer via telephone because he had the wrong number. The employer confirmed that Mrs. Marina is a temporary employee just like the claimant.

The claimant filed a claim for unemployment insurance benefits effective August 4, 2013, and has received benefits after the separation from employment in the amount of \$3,670.00. Michael Payne participated in the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1. The employer herein is a temporary employment agency and temporary employment agencies are governed by Iowa Code §96.5-1-j, which places specific restrictions on both the employer and the employee with regard to unemployment insurance benefits.

To be disqualified from receiving benefits, at the time of hire the employer must advise the individual in writing of the three-day notification rule and the employer did so in this case. The employer must also notify the individual that he may be disqualified from receiving unemployment insurance benefits if he fails to notify the employer. Iowa Code § 96.5-1-j. The claimant was given a copy of the assignment policy, which advised him that failure to contact the employer after the end of an assignment could result in a loss of unemployment benefits.

The claimant knew he was required to contact the employer after the completion of his assignment so the employer knew whether he was available for additional assignments. He did not contact the employer after the end of his assignment on February 26, 2014. The claimant has not established good cause for his failure to do so. Although he provided a written statement for the fact-finding interview claiming he was contacting the employer within three days, the employer never received it. The letter was dated March 3, 2014, and even if he mailed it that day, there was no way the employer could have received it within three days after the completion of the claimant's last work assignment. He said he did not call the employer because he did not have their telephone number but it would have taken a minimal effort to find that and he could have stopped in their office if nothing else. The claimant did not satisfy the requirements of Iowa Code § 96.5-1-j and is disqualified from receiving unemployment insurance benefits.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received benefits in the amount of \$3,670.00 as a result of this claim. A waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount.

DECISION:

The unemployment insurance decision dated April 7, 2014, (reference 03), is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$3,670.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs