

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MARIA CERVANTES**

Claimant

**APPEAL 21A-UI-11746-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**

Employer

**OC: 12/29/19**

**Claimant: Respondent (2R)**

Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.5-1-j – Separation from Temporary Employer

**STATEMENT OF THE CASE:**

Advance Services (employer) appealed a representative's April 20, 2021,<sup>1</sup> decision (reference 01) that concluded Maria Cervantes (claimant) was eligible to receive unemployment insurance benefits after her separation from work with Advance Services. A hearing was scheduled for July 13, 2021. The employer participated through Melissa Lewien. The employer offered and exhibits 1, 2, 3, D-1, and D-2, were received into evidence. The administrative law judge took official notice of the administrative file.

**ISSUES:**

- Whether the employer's appeal is timely? Whether it has reasonable grounds to be considered otherwise timely?
- The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 service. The claimant performed services from September 2, 2019 through November 27, 2020. The claimant signed documents on September 10, 2020 and December 1, 2020, indicating she was to contact the employer within three working days following the completion of an assignment to request placement in a new assignment. The employer provided copies of these assignment policies. (Exhibits 1 and 2) The document did indicate the consequences of a failure to notify the employer. The claimant was given a copy of the document which was separate from the contract for hire. The claimant completed her last assignment on February 26, 2021, but did not seek reassignment from the

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<sup>1</sup> There was an error at intake. The employer's appeal letter exhibit D-2 consists of a handwritten message on a representative's April 20, 2021, reference 01, decision rather than the decision made by a representative on January 21, 2020, reference 01.

employer. The employer provided a note indicating the claimant did not request reassignment at that time. (Exhibit 3)

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

For the reasons that follow the administrative law judge concludes timeliness was placed on the hearing notice in error because the employer was appealing a decision made on April 20, 2021 rather than one made on January 20, 2021. He further concludes the claimant was separated from employment for a disqualifying reason.

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.

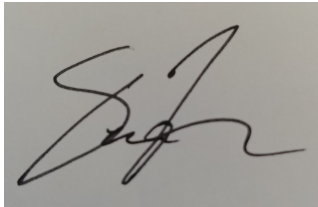
Under the Iowa Code the employer must advise the claimant of the three-day notice requirement and give the claimant a copy of that requirement. The notice requirement must be separate from the contract for hire. The employer followed the requirements of the code. The claimant did not. She did not request reassignment. Therefore, benefits are denied.

**DECISION:**

The representative's January 21, 2020, decision (reference 01) is reversed. The claimant was separated from the employer for no good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

**REMAND:**

The administrative law judge is remanding the issues of overpayment of regular unemployment insurance benefits and Federal Pandemic Unemployment benefits to the Benefits Bureau for an initial determination.<sup>2</sup>



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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

August 6, 2021  
Decision Dated and Mailed

smn/kmj

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<sup>2</sup> Due to defects on the hearing notice and the absence of the claimant, the administrative law judge was not able to evaluate these issues.