

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DIANE L KRAUSE**

Claimant

**APPEAL NO. 17A-UI-11730-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**

Employer

**OC: 10/15/17**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Diane Krause filed a timely appeal from the November 8, 2017, reference 01, decision that disqualified her for benefits and that stated the employer's account would not be charged for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Krause voluntarily quit on October 10, 2017 without good cause attributable to the employer. The deputy concluded that Ms. Krause had failed to notify the temporary employment firm within three days of completing an assignment after being told in writing of her obligation to make such contact. After due notice was issued, a hearing was held on December 6, 2017. Ms. Krause participated. Melissa Lewien represented the employer and presented additional testimony through Kim Warnick.

**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: Diane Krause established her employment relationship with Advance Services, Inc. (ASI) in February 2015. At that time, Ms. Krause signed an End of Assignment Policy that stated 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.

Ms. Krause received a copy of the End of Assignment Policy when she signed it in 2015. Ms. Krause has worked in multiple assignments through ASI. In March 2017, Ms. Krause began an assignment at Iowa State University. In connection with offer and acceptance of that assignment, ASI had Ms. Krause electronically sign the End of Assignment Policy. The policy included the language from the 2015 document, but added the following:

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.

Despite the language contained in the electronic document, the employer did not provide Ms. Krause with a copy of the End of Assignment Policy in March 2017. Instead, the employer placed a printer nearby the computer and left it to Ms. Krause to decide whether she wished to print and take a copy of the policy. Ms. Krause did not get a copy of the policy in 2017.

Ms. Krause's most recent work assignment through ASI was at Seaboard Foods of Iowa. The assignment began in July 2017. The assignment was a full-time, temporary administrative support position that was available while a Seaboard employee was on maternity leave. The work hours were 8:00 a.m. to 5:00 p.m., Monday through Friday. Kim Warnick, ASI Ames Office Manager, placed Ms. Krause in the assignment. Erin Hyde, Human Resources Manager at Seaboard, was Ms. Krause's immediate supervisor during the assignment.

During the latter half of September 2017, Kim Warnick, ASI Ames Office Manager, visited Seaboard Foods. Ms. Krause spoke with Ms. Warnick at that time about the Seaboard assignment coming to an end on October 6, 2017 in connection with the Seaboard employee's return from maternity leave. During that discussion, Ms. Krause inquired about an additional work assignment and Ms. Warnick mentioned a potential assignment for which she felt Ms. Krause would be well-suited. Ms. Krause expressed interest in the potential assignment. The potential assignment was with a business that ended up not contracting with ASI.

Ms. Krause completed the work assignment at Seaboard on October 6, 2017. On that same morning, Ms. Krause called the ASI Ames office and spoke with Ms. Warnick for 10 minutes. Ms. Krause told Ms. Warnick that she had applied for a permanent position with Seaboard and asked whether ASI had other work available for her if her application at Seaboard fell through. At the moment, ASI did not have another position for Ms. Krause. Ms. Warnick instructed Ms. Krause that she would need to check in with ASI "at that time," meaning when she knew whether she obtained the job at Seaboard. On that same day, Ms. Krause went to the ASI Ames office to redeem ASI Safety Bucks. Ms. Krause continued in regular contact with ASI thereafter.

## **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.

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 Ct. 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.*

The employer elected not to submit the ASI Message Report from October 6, 2017 as an exhibit for the hearing for the administrative law judge's review. The weight of the evidence indicates that the Message Record the employer asserts was created on October 6, 2017 does not accurately reflect that contact between Ms. Krause and the employer on that date. To wit, Exhibit 3, the written statement from Ms. Warnick, specifically indicates that on October 6, 2017 Ms. Krause "Did ask should this job not pan out, would we have work."

The employer's end-of-assignment policy statement complies with the requirement of the statute. Though the employer did not provide Ms. Krause with a copy of the policy she electronically signed in 2017, Ms. Krause conceded that she had signed and received the policy in 2015, when she commenced the employment relationship. Accordingly, Ms. Krause was obligated to contact ASI within three working days of the end of an assignment to request a new assignment. Ms. Krause satisfied that requirement. The weight of the evidence establishes that Ms. Krause completed the Seaboard Foods work assignment on October 6, 2017 and on that same day, contacted ASI and inquired about a further assignment. ASI did not have an assignment for Ms. Krause at the moment and directed her to renew the discussion when she learned whether she would be hired by Seaboard Foods.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Krause's October 2017 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Ms. Krause is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Krause.

**DECISION:**

The November 8, 2017, 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 occurred on October 6, 2017. The claimant is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs