

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VERONICA TORRES
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 16A-UI-12515-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/09/16
Claimant: Appellant (2)

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 15, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit her employment by failing to report back to her employer within three days of her assignment ending to request a new job assignment. The parties were properly notified of the hearing. A telephone hearing was held on December 9, 2016. The claimant, Veronica Torres, participated, and Spanish interpreter Roger (employee number 8725) from CTS Language Link assisted with the hearing. The employer, Advance Services, Inc., participated through Melissa Lewien, risk management. Employer's Exhibit 1 was received and admitted into the record.

ISSUE:

Did claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a sorter, from August 29, 2016, until October 7, 2016, when she completed her assignment. Laura Martinez, who worked out of the employer's Toledo office, notified claimant on October 6 that her assignment was ending. That day, claimant asked Martinez if there were any additional assignments for her, and Martinez told her they had none available. Claimant testified that she called daily after that to seek a new assignment. No one answered the telephone at the employer's Toledo office, and no one ever returned claimant's telephone messages. Lewien testified that no one from the Toledo office told her that claimant had made a request for a new assignment.

Claimant received a copy of the employer's policy stating that she needed to report back to the employer within three days of the assignment ending to request a new assignment. (Exhibit 1) This policy complies with the specific terms of Iowa Code § 96.5(1)j. Claimant received and signed a copy of this policy in English. Lewien testified that Martinez spoke Spanish and could have provided a copy of this policy in Spanish had she requested one. Martinez did not participate in the hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was with good cause attributable to the employer. Benefits are allowed.

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.

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 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.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant provided more credible testimony than the employer about the end of employment. Claimant provided firsthand testimony about the actions she took once she learned her assignment was ending. The employer did not have Martinez participate in the hearing, though she was the person who informed claimant about the end of her assignment and worked out of the office that claimant contacted for additional work. Additionally, the administrative law judge believes claimant may not have completely understood the three-day policy, as the copy she signed was in English and not Spanish.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment. Since the claimant provided credible testimony that she contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and there was no work available, no disqualification is imposed. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The November 15, 2016, (reference 01) unemployment insurance decision is reversed. Claimant separated from the employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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