

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE R SMITH
Claimant

APPEAL NO. 17A-UI-02506-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 08/07/16
Claimant: Respondent (4)

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

STATEMENT OF THE CASE:

Advance Services, Inc. filed a timely appeal from a representative's decision dated March 2, 2017, reference 04, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 29, 2017. Claimant participated. The employer participated by Ms. Melissa Lewien, Risk Manager. Employer's Exhibits A and B were admitted into the hearing record.

ISSUE:

The issue is whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Diane Smith was employed by Advance Services, Inc. from September 19, 2016 until December 30, 2016, when her temporary assignment ended. Ms. Smith was assigned to work with the Syngenta Seed Co. by Advance Services and was paid by the hour by the temporary employment service. When Ms. Smith made application for the temporary assignment at the Syngenta Seed Co. through Advance Services, she signed the agreement to contact the temporary employment firm within three business days after the completion of each work assignment. The claimant signed this agreement in conjunction with a number of other documents that were signed on that day.

Ms. Smith was referred to Advance Services, Inc. by Mr. David Foster, an employee of Syngenta Seeds.

Ms. Smith was previously directly employed by the Syngenta Seed Co. as a day time analyst specialist until March 11, 2016, when she was separated from her employment with Syngenta Seed Co. because of departmental reorganization.

Mr. Foster had contacted the claimant directly and requested that Ms. Smith return to Syngenta to work for the company temporarily and specified to Ms. Smith the one-time assignment would conclude at the "end of the year." Mr. Foster further explained that because the company did

not hire temporary or part-time workers directly, the company planned on using the temporary employment service to facilitate Ms. Smith's return to work for the specified period of September 19, 2016 until "the end of the year." The claimant was referred to a meeting with Advance Services by Mr. Foster, and the assignment was set up through Advance Services, Inc.

Ms. Smith attended the pre-employment meeting with Advance Services, Inc. on September 16, 2016 and completed the necessary paperwork, signing numerous documents both in writing and electronically.

Ms. Smith completed the agreed upon term of employment on Friday, December 30, 2016, the date established and set forth by Syngenta Seeds as the period of employment. Ms. Smith did not contact Advance Services, Inc. within three working days, or thereafter for additional assignments. Ms. Smith was not seeking temporary employment with other employers at the time that she was referred to Advance Services, Inc. by her previous employer Syngenta Seeds. The claimant only went to Advance Services, Inc. because she had been instructed to do so by her former employer, who had set the term of the claimant's employment to end "at the end of the year."

It is Advance Services, Inc.'s position that the claimant should be disqualified for unemployment insurance benefits because she had not contacted the temporary employment service within three business days after the completion of her job assignment, although she had signed paperwork agreeing not to do so.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Diane Smith's separation from the temporary employment agency was for good cause accountable to Advance Services, Inc. It was.

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.

Iowa Admin. Code r. 871-24.26(22) 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:

(22) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. 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 employees shall be considered to have voluntarily quit employment.

The evidence in the record indicates that the term of the temporary employment engaged in by Ms. Smith had been set forth by Syngenta Seeds and to Advance Services, Inc. specifying that the term of the claimant's employment to be from September 19, 2016 until December 30, 2016. The claimant had been recruited by her previous employer to return their job location for a specified period of time to provide specialized training to employee's who would be replacing the claimant after her position had been eliminated by Syngenta Seeds. The assignment

offered to the claimant and accepted by her was not typical, but a specific agreement to work for a specified period of time. The claimant completed the work assignment on December 30, 2016, when the agreement of temporary employment came to an end by its own terms.

The claimant's intent at the time that she accepted employment with Advance Services, Inc. was not to make herself available for general assignments in the labor market, but only agreed to one specific assignment for a specified length of time at the location where she had been previously employed. Under these circumstances the claimant was not obligated to or bound by an agreement to contact the temporary employment service for more assignments within three working days.

The claimant's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Claimant is eligible to receive unemployment insurance benefits provided that she meets all the eligible requirements of Iowa law.

DECISION:

The representative's decision dated March 2, 2017; reference 04, is affirmed as modified. The portion of the determination finding the claimant eligible to receive unemployment insurance benefits without disqualification is affirmed. The portion of the determination finding the claimant was employed on a temporary basis and finding that the claimant did notify the temporary employment services within three days of completion of the last work assignment is modified. The claimant had completed the contract of hire by working until a specific time had elapsed and the contract was completed. Claimant had left employment with good cause attributable to the employer, after completing the agreed upon contract of employment. Benefits are allowed provided the claimant is otherwise eligible.

Terry Nice
Administrative Law Judge

Decision Dated and Mailed

scn/scn