

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LINDA L LVEA
Claimant

ADVANCE SERVICES INC
Employer

APPEAL NO. 20A-UI-03748-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/25/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Linda Lvea filed a timely appeal from the April 30, 2020, reference 02, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Lvea voluntarily quit on March 20, 2020 without good cause attributable to the employer by failing to notify the temporary employment firm within three days of completing her last assignment after having been told in writing of her obligation to make such contact. After due notice was issued, a hearing was held on May 22, 2020. Ms. Lvea participated. Melissa Lewien represented the employer and presented additional testimony through Tamara Rundle. Exhibits 1 and 2 were received into evidence.

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: Linda Lvea established her employment with Advance Services, Inc. (ASI) in October 2019. Ms. Lvea most recently performed work for ASI in a single full-time, temp-to-hire work assignment as a customer service representative at Cedar Crest Manufacturing. The assignment began on January 2, 2020. Ms. Lvea completed the assignment on March 20, 2020. On that day, the Cedar Crest supervisor, Sue Kazimour, advised Ms. Lvea that due to the COVID-19 pandemic there was no more work for Ms. Lvea at that time. Ms. Kazimour expressed interest in having Ms. Lvea return to perform additional work for Cedar Crest in the future. A couple hours later, Tamara Rundle telephoned Ms. Lvea and asked whether she had heard that news that the assignment was done. Ms. Lvea confirmed she had. Ms. Rundle asked Ms. Lvea whether she wanted to wait to return to Cedar Crest or move on to a different assignment. Ms. Lvea indicated that she would prefer to wait to return to Cedar Crest. Based on the manner in which Ms. Rundle presented the choice, Ms. Lvea expressed a preference, unaware that merely expressing a preference could have an adverse impact on her employment status and eligibility for unemployment insurance benefits. Ms. Rundle made no reference to any such impact.

On October 1, 2020, Ms. Rundle conducted an onboarding process with Ms. Lvea. During that process, Ms. Lvea electronically acknowledged the employer's End of Assignment Policy. The policy states 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.

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.

The materials that Ms. Rundle gave to Ms. Lvea to take with her included a statement of the End of Assignment Policy, but the document was formatted differently than the electronically acknowledged copy the employer presented for the appeal hearing as Exhibit 2.

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.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

The weight of the evidence in the record establishes a March 20, 2020 separation that was for good cause attributable to the employer. Ms. Lvea completed the assignment in good faith. Ms. Lvea engaged in discussion with the employer regarding additional work in good faith. The evidence establishes that the employer did not substantially comply with Iowa Code section 96.5(1)(j). The evidence establishes two instances wherein the employer used slight-of-hand deception to Ms. Lvea's detriment. The first instance involved having Ms. Lvea "electronically sign" the End of Assignment Policy and then giving her a differently formatted copy of the policy that was not "a copy of the signed document" as required by the statute. The second slight-of-hand deception occurred when the employer presented Ms. Lvea with the choice of waiting to be recalled to work at Cedar Crest or moving on to another assignment, while unreasonably omitting that a preference to return would be deemed a voluntary quit. Ms. Lvea expressed an interest in additional work on March 20, 2020. It would be a perversion of the letter and intent of Iowa Code section 96.5(1)(j) to conclude this was a voluntary quit without good cause attributable to the employer.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Lvea's March 20, 2020 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Ms. Lvea is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The April 30, 2020, reference 02, decision is reversed. The claimant's March 20, 2020 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored, slightly textured background.

James E. Timberland
Administrative Law Judge

July 6, 2020
Decision Dated and Mailed

jet/scn