

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ARIANA L SANCHEZ
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 17A-UI-11919-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/22/17
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 17, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 8, 2017. The claimant participated and testified with the assistance of a Spanish language interpreter from CTS Language Link. Also testifying on behalf of the claimant were witnesses Catalina Rivelo and Veronica Torres. The employer participated through Risk Manager Melissa Lewien and Human Resource Coordinator William Salas Molina. Claimant's Exhibit A and employer's Exhibit 1 were received into evidence. Official notice was taken of the fact-finding documents.

ISSUE:

Did the 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: The claimant was employed full-time as a picker last assigned at Pioneer from August 31, 2017, and was separated from the assignment, but not the employment, on October 21, 2017. Claimant was notified the assignment was ending due to lack of work by a member of Pioneer's Human Resources Department. The employer has a policy in place which requires employees to notify it within three working days of an assignment ending and to request a new assignment within that time. Claimant signed an acknowledgment stating she had read the policy and received a copy for her records. (Exhibit 1). On October 24, 2017, claimant, along with Rivelo and Torres, went to the employer's offices in Toledo to inform them that the assignment had ended and to request another assignment. Claimant, Rivelo, and Torres all testified that they all spoke with Molina, who told them no additional assignments were available at the time, but that the employer would call them if anything came up.

Molina acknowledged, on October 24, 2017, three women, including Rovelov and Torres, came in to speak with him because they had been laid off from Pioneer and were seeking additional

assignments. This was Molina's second day of employment. Molina testified he only spoke with Ravelo and Torres. According to Molina, claimant was present but did not speak the entire time, so he did not ask her if she had been laid off or was requesting a new assignment. When questioned by the claimant about which of the women had spoken to him during various parts of the conversation, Molina could not recall who told him what. Molina testified because he was a new employee, he asked the women to write down their names for him. The only names that were written down were Ravelo and Torres. Molina confirmed he told the women there might be some assignments coming up with another company soon, but that there was no work available at that time.

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.

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 lettered paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force 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 § 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 § 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.

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. Claimant provided credible testimony that she, along with Torres and Ravelo, went into the employer's offices on October 24, 2017, for the purposes of notifying the employer the assignment ended and to request a new assignment. There is a dispute in the testimony between Molina and the claimant and her witnesses as to whether the claimant spoke directly to Molina. The parties do agree, however, that a group of three women came in and at least two of the women specifically stated they had been laid off and were requesting work. Molina further acknowledged that he made no inquiries as to whether the third woman had been laid off from the same employer and was requesting work.

There appears to have been a break-down in communication between claimant and employer. As most members of management, especially those in the human resources field, are considerably more experienced in personnel issues and operate from a position of authority over a subordinate employee, it is reasonably implied that the ability to communicate clearly is extended to discussions about employment status. While it is understandable that Molina may have been sure of exactly what to do, since it was only his second day of employment, if he was not sure as to claimant's employment status, he should have asked her. Otherwise, it was reasonable for claimant, who was part of the employment conversation even if she was not speaking, to assume he understood she had been laid off and was seeking assignment just as the other two women were. The employer knew, or at least reasonably should have known, claimant was there for the same purpose as the two women she was with. Claimant was reasonable in assuming her trip to the employer's office on October 24, 2017 was sufficient to put the employer on notice that she had been laid off and was seeking assignment. Since 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.

DECISION:

The November 17, 2017, (reference 01) unemployment insurance decision is reversed. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs