

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LEVI J ITZEN
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 21A-UI-08916-ML-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 2/14/21
Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.5-1-j – Separation from Temporary Employer

STATEMENT OF THE CASE:

Levi Itzen (claimant) appealed an Iowa Workforce Development March 26, 2021, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 24, 2021. The claimant participated personally. Witness Darren Ayers also provided testimony on claimant's behalf. The employer, Advance Services, Inc., did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate in the hearing.

Claimant offered and Exhibit 1 was received into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

The employer is a temporary employment service and assigned the claimant to multiple clients. Claimant has worked for the employer periodically since approximately September 2018. On this particular assignment, claimant worked for Corteva Agriscience in Reinbeck, Iowa. The assignment started on June 1, 2020, and ended February 12, 2021. Claimant worked full-time as a forklift truck driver. Claimant testified that "Anna" was his immediate supervisor, and the individual he would call for assignments.

Claimant believes the employer has a written policy requiring employees to notify Advance Service of the completion of an assignment and seek reassignment within three working days; however, he did not recall seeing any documents regarding the same. The employer did not

participate in the hearing. As such, the employer's policy is not included in the evidentiary record.

On February 12, 2021, claimant and Mr. Ayers called Anna around 2:30 p.m. and notified her that the Corteva assignment had ended. Anna told claimant and Mr. Ayers that she did not have any assignments for them at the time. Claimant testified that he and Mr. Ayers also notified a "Candice" of the fact that their assignment had ended.

Anna contacted claimant on Friday, February 19, 2021, and asked if he would be interested in an assignment in Dysart, Iowa. Claimant declined the assignment on February 21, 2021, as he was experiencing symptoms of COVID-19 and needed time to recover. On February 25, 2021, Anna told claimant the Dysart, Iowa job was no longer available anyways.

Claimant started working for the employer/Corteva again on May 3, 2021.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980).

Claimant asserts he contacted the employer and sought reassignment within the three day time period provided in Iowa Code section 96.5(1)J. The employer did not present or provide rebuttal evidence. Under the Iowa Code the employer must advise the claimant of the three-day notice requirement and give the claimant a copy of that requirement. The notice requirement must be separate from the contract for hire. The employer did not participate at the evidentiary hearing. As such, there is no evidence the employer followed the requirements of the code. The employer has failed to prove that claimant voluntarily quit his position by failing to seek reassignment within three working days of his assignment ending. No disqualification is imposed and benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The March 26, 2021 decision (reference 01) is REVERSED. The claimant's temporary separation from employment was attributable to the employer. Benefits are allowed, provided he is otherwise eligible.



Michael J. Lunn
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June 23, 2021
Decision Dated and Mailed

mjl/ol