

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE C TOPETE

Claimant

APPEAL NO. 09A-UI-18958-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 08/02/09

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Jose Topete filed a timely appeal from the December 15, 2009, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on January 28, 2010. Mr. Topete participated personally and was represented by Attorney Michele Van Wyhe. Scott Mackensie, Unemployment Specialist, represented the employer. Exhibits One through Four and A 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: The employer is a temporary employment agency. Jose Topete established his employment relationship with Advance Services, Inc., in August 2009 and worked in one full-time temporary general labor assignment at Palmer Candy until November 20, 2009, at which time he was laid off due to a lack of work. An Advance Services employee notified Mr. Topete on November 20, 2009 of the layoff. Mr. Topete had already heard that the assignment would be coming to an end soon. Before the assignment ended, Mr. Topete told the employer he wanted an additional assignment. The employer did not have an additional assignment for Mr. Topete at that time. Mr. Topete was laid off on a Friday. On the following Monday, Tuesday, and Wednesday, Mr. Topete was in contact with the employer.

On August 4, 2009, the employer had Mr. Topete sign an Assignment Policy. The assignment policy contained several provisions, one of which required that Mr. Topete report to Advance Services within three days after an assignment ended or be deemed to have voluntarily quit the employment. On August 7, 2009, the employer had Mr. Topete sign a Policies & Procedures document that contained 12 policy provisions, one of which was the same end-of-assignment notice requirement. Mr. Topete remembers receiving a copy of this second document.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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. 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.

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.

For the purposes of this paragraph:

(1) "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.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

871 IAC 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.

The weight of the evidence in the record indicates that the employer's end-of-assignment notice requirement does not satisfy the notice requirements of the statute. The statute expressly requires that the end-of-assignment policy be set forth as a separate document with only the end-of-assignment notice policy set forth on the document. The purpose of that requirement is to make certain employees have clear notice of an important policy that can have a profound impact of their eligibility for unemployment insurance benefits. The purpose of the statutory requirement that the policy be set out on a separate document is to avoid have the policy buried in another document, where it might easily be overlooked. The employer buried its policy. This does not comply with the statutory requirement. The employer cannot claim the benefit of the statute. Because the employer is not entitled to the benefit of the statute, Mr. Topete was under no obligation to seek a new assignment with the employer. Regardless, the weight of the evidence indicates that Mr. Topete was in contact with the employer the next work day after his assignment ended.

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

DECISION:

The Agency representative's December 15, 2009, reference 03, decision is reversed. The claimant's 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs