

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DUSTIN G BRADEN**  
Claimant

**APPEAL NO. 17A-UI-01557-TNT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**  
Employer

**OC: 01/01/17**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Advance Services, Inc., the employer, filed a timely appeal from the representative's decision dated February 8, 2017, reference 02, which held the claimant eligible to receive unemployment insurance benefits, finding the claimant completed a temporary assignment on January 6, 2017, and notified the temporary employment within three working days of the completion of his last work assignment. After due notice was provided, a telephone hearing was held on March 3, 2017. Although the claimant, Dustin Braden, registered a telephone number for the hearing, he was not available at the telephone number provided and two messages were left for the claimant. The employer participated by Ms. Millissa Lewein, Risk Manager, and Ms. Whitney Reinier, Human Resource Coordinator. Employer's Exhibit 1 was admitted into the hearing record.

**ISSUE:**

The issue is whether the claimant voluntarily left employment with this temporary employment service by failing to contact the temporary service within three working days of completion of his last assignment to inform the temporary firm of his availability for reassignment.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Dustin Braden most recently was employed by Advance Services, Inc. from August 8, 2016 until January 6, 2017, when his long-term assignment at the Pella Corporation ended. Mr. Braden was employed as a full-time assembler during the assignment and was paid by the hour. His immediate contact person with Advance Services, Inc. was Ms. Whitney Reinier.

When Mr. Braden began employment with Advance Services, Inc., he signed an agreement with the company to contact the temporary service after the completion of each assignment within three working days to establish his availability for other work assignments and was informed that failure to do so would be considered a voluntary quit and could affect his unemployment insurance benefits. (See Employer's Exhibit 1) Mr. Braden was also given a copy of the agreement.

On January 6, 2017, the claimant's assignment at the Pella Corporation ended. Although Mr. Braden contacted Advance Services, Inc. on January 6, 2017, he did not request other work assignments or indicate that he was available for other work assignments. Mr. Braden only asked questions about claiming unemployment insurance benefits. The next contact Advance Services, Inc. had with Mr. Braden took place on January 31, 2017. At that time, the claimant came into the Advance Services, Inc. offices and inquired only about obtaining an "insurance card".

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without 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 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.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant has not only completed his or her most recent work assignment, but also that the claimant is available for work at the conclusion of the temporary assignment. When Mr. Braden began employment with Advance Services, Inc., he signed an agreement to contact the temporary employer within three working days after the completion of a work assignment, for another assignment with the company. Mr. Braden was informed in the agreement that failure to do so would be a voluntary quit and could affect his unemployment insurance benefits.

The testimony of the employer's witness and the employer's exhibit establish that the claimant did not contact the temporary employment service within three working days to establish his availability for additional work assignments. When the claimant contacted the employer on January 6, 2017, he did not inquire about additional assignments or indicate that he was looking for more work, but only questioned the employer about the requirements for claiming unemployment insurance benefits. When the claimant next contacted the temporary employer on January 31, 2017, Mr. Braden again did not establish his availability for more work assignments or request assignments, but instead only questioned the employer about an insurance matter.

There being no evidence to the contrary, the administrative law judge concludes the claimant has not complied with the requirements of Section 96.5(1), as the evidence establishes that he did not contact the temporary employment service within three working days to establish availability and request additional work assignments. Accordingly, the claimant is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects the claimant has received unemployment insurance benefits in the amount of \$1,736.00 since filing a claim with the effective date of January 1, 2017, for week ending dates January 14, 2017 through February 25, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview or make a first-hand witness available for rebuttal.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award

benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

**DECISION:**

The representative's decision dated February 8, 2017, reference 02, is reversed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. Claimant has been overpaid unemployment insurance benefits in the amount of \$1,736.00 and is liable to repay this amount. The employer's account shall not be charged because the employer participated in the fact-finding interview.

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Terry Nice  
Administrative Law Judge

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Decision Dated and Mailed

rvs/rvs