

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MA ROSARIO N PEREZ NUNEZ
Claimant

APPEAL 19R-UI-00601-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 11/18/18
Claimant: Appellant (1)

Iowa Code § 96.5(1)j – VQ – Temporary employment firm
Iowa Admin. Code r. 871-24.26(15) – VQ – Employee of a temporary employment firm

STATEMENT OF THE CASE:

Ma Rosario Perez Nunuz, Claimant, filed an appeal from the December 14, 2018 (reference 02) unemployment insurance decision that denied benefits because she voluntarily quit work with Advance Services, Inc. by failing to notify the temporary employment firm within three working days of the completion of the last work assignment. The parties were properly notified of the hearing. The hearing was originally scheduled for January 8, 2019 at 3:00 p.m. The claimant did not register for the hearing. Because claimant had not registered, no hearing was held and a default judgment dismissing claimant's appeal was entered. Claimant filed an appeal with the Employment Appeal Board, which remanded the case for a new hearing. The parties were properly notified of the hearing. A telephone hearing was held on February 5, 2019 at 9:00 a.m. Claimant participated. Spanish interpretation was provided by Mariana (ID number 11220) from CTS Language Link. Employer participated through Melissa Lewien, Risk Management. Employer's Exhibits 1 – 3 were admitted.

ISSUES:

Whether claimant's separation was a voluntary quit without good cause attributable to the employer.

Whether claimant made a timely request for another job assignment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's last assignment with Advance Services Inc., a temporary employment firm, was as a full-time agricultural laborer with Syngenta Seed in Slater, Iowa from April 9, 2018 until her assignment ended on November 16, 2018. (Lewien Testimony)

On November 12, 2018, employer notified claimant that her assignment with Syngenta Seed would end on November 16, 2018. (Claimant Testimony) Claimant did not request a new assignment within three days. (Claimant Testimony) Claimant was advised in writing of her duty to notify the employer within three days of completion of an assignment and to request a new assignment. (Exhibits 2 & 3) Claimant received a copy of the three day notice requirement. (Exhibit 2 & 3) Employer had continuing work available for claimant if she had requested it. (Lewien Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit without good cause attributable to employer. Benefits are denied.

Iowa Code section 96.5(1)(j) provides:

An individual shall be disqualified for benefits

1. 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.

Iowa Admin. Code r. 871-24.26(15) 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:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer or any other currently accepted means of

communications. Working days means the normal days in which the employer is open for business.

The claimant has the burden of proving that a voluntary quit was for good cause attributable to the employer. *Id.* at § 96.6(2).

It is the duty of the administrative law judge, as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer's version of events to be more credible than the claimant's version of those events.

Claimant's assignment at Syngenta Seed ended on November 16, 2018. The claimant did not request a new assignment within three days of the assignment ending. The claimant voluntarily quit her employment by not requesting a new assignment within three days. The claimant has not met her burden of proving "good cause" attributable to the employer. Benefits are denied.

DECISION:

The December 14, 2018 (reference 02) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, IA 50319-0209
Fax: 515-478-3528

Decision Dated and Mailed

acw/rvs