

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CINDY M WEBER**

Claimant

**APPEAL NO. 13A-UI-06246-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**

Employer

**OC: 04/28/13**

**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 22, 2013, reference 01, decision that allowed benefits in connection with a May 2, 2013 separation. After due notice was issued, a hearing was held on July 2, 2013. Claimant Cindy Weber participated. Michael Payne represented the employer. Exhibits One and Two 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: Advance Services, Inc., (ASI), is a temporary employment agency. Cindy Weber began her employment with ASI in December 2012 and performed work in a single, full-time, temporary assignment at Quality Chef Foods/Heinz in Cedar Rapids. Ms. Weber last performed work in the assignment on May 2, 2013. At that time, Quality Chef Foods/Heinz, notified Ms. Weber that the plant would shut down for a brief period, after which Ms. Weber would return to the assignment. On May 8, 2013, Quality Chef Foods/Heinz notified ASI that it would not be asking Ms. Weber to return for a new assignment at the end of the shutdown. On May 8, 2013, an ASI representative called Ms. Weber and left a voicemail message. Ms. Weber immediately returned the message and spoke to the ASI representative. The ASI representative told Ms. Weber that she would not be returning to the assignment and that the assignment had ended. Ms. Weber asked whether ASI had anything else for her and the representative said ASI did not have anything else for her. After that, Ms. Weber had no further contact with ASI.

At the time, Ms. Weber began her employment with ASI, the employer had her sign a Job Assignment Sheet and an Assignment Policy/End of Assignment Policy. The End of Assignment policy said that it was Ms. Weber's responsibility to contact Advance Services, Inc., within three days after her assignment ended to request further assignments. The policy indicated that if Ms. Weber did not do that, then ASI would consider her to have voluntarily quit. The policy further indicated that failure to make the required contact could affect Ms. Weber's

eligibility for unemployment insurance benefits. The policy statement was clear and concise. The only other policy reference on the document was the Assignment Policy, which clarified that ASI was the employer and that failure to complete an assignment would be considered a voluntary quit. Ms. Weber received a copy of the Assignment Policy/End of Assignment Policy after she signed it.

## **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.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The administrative law judge notes that the employer did not present testimony from the ASI representative involved in the events on or around May 8, 2013. The employer had the ability to present such testimony, but elected not to. Ms. Weber was the only person who testified about those matters from personal knowledge. The weight of the evidence indicates that on May 2, 2013, Ms. Weber, Quality Chef Foods/Heinz, and ASI all were functioning under the understanding that the assignment had not yet ended and that Ms. Weber would be returning to the assignment after a brief shutdown. That changed on May 8, when Quality Chef Foods/Heinz notified ASI that it would not be asking Ms. Weber to return. ASI left a message for Ms. Weber that day. Ms. Weber called back that day and spoke to the ASI representative. The ASI representative told Ms. Weber that assignment had ended. Ms. Weber asked for more work. The ASI representative told Ms. Weber that ASI did not have another assignment for Ms. Weber at that time. That does not necessarily mean that ASI did not have any assignments for anyone at that time or that ASI did not have additional assignments after that day. In any event, Ms. Weber fulfilled her obligation under the statute to contact the employer to request a new assignment within three working days of the end of the assignment by making the request for additional work during the May 8 return telephone call.

Ms. Weber's May 2013 separation from ASI was for good cause attributable to the employer. Ms. Weber is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

#### **DECISION:**

The Agency representative's May 22, 2013, reference 01, decision is affirmed. The claimant's May 2013 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs