

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEVON C PULLIAM
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 20A-UI-02844-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/01/20
Claimant: Respondent (2R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On April 3, 2020, Advance Services Inc. (employer) filed an appeal from the April 1, 2020 (reference 01) unemployment insurance decision that determined Devon Pulliam (claimant) was eligible to receive unemployment insurance benefits.

A telephone hearing was held on May 5, 2020. The parties were properly notified of the hearing. Employer participated by Melissa Lewien, Risk Management. Branch Manager Kim Warnick participated as a witness for employer. Claimant participated personally.

Employer's Exhibits 1-3 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Was the claimant overpaid benefits? Should claimant repay benefits or should employer be charged due to employer participation in fact finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a temporary employee. Claimant's most recent assignment was a full-time lab research position with BASF. This assignment began June 20, 2016. The assignment ended December 20, 2019. Both claimant and employer were notified that the assignment would end on that date. The assignment ended because claimant was no longer needed. Claimant voluntarily quit effective December 26, 2019, by failing to contact employer and request further assignment within three business days of the assignment ending.

Claimant did not contact employer to request further assignment until February 3, 2020. See Exhibit 1. Employer's policy requires employees to contact it within three working days of the end of an assignment to request further assignment. Failure to do so is considered a voluntary quit. Claimant signed this policy and was aware of it. See Exhibit 2. This policy is consistent with relevant Iowa law.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$399.00 for a total of nine weeks, from the benefit week ending March 7, 2020 and continuing through the benefit week ending April 2, 2020. The total amount of benefits paid to date is \$3,591.00. Claimant has also received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$3,000.00.

Lewien participated in the fact-finding interview. She provided substantially the same information as was provided during the appeal hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the April 1, 2020 (reference 01) unemployment insurance decision that determined claimant was eligible to receive unemployment insurance benefits is REVERSED.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

Iowa Code section 96.5(1)a 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). "In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer". *Id.* (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)).

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 S.2d 827 (Florida App. 1973). While a notice of intent to quit is not required to obtain unemployment benefits where the claimant quits due to intolerable or detrimental working conditions, the case for good cause is stronger where the employee complains, asks for correction or accommodation, and employer fails to respond. *Hy-Vee Inc. v. EAB*, 710 N.W.2d 1 (Iowa 2005).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

It is the duty of the administrative law judge as the trier of fact in this case 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 believable evidence; 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 administrative law judge found the testimony offered by Lewien and Warnick to be more credible and reliable than the testimony provided by claimant. Factual disputes were resolved as set forth above based on this finding.

The main factual dispute involved whether claimant had contacted employer as required under its policy. Claimant testified he contacted employer prior to his assignment ending - but after learning it would end - to inquire about placement on another assignment. He testified he was told

someone would call him back, but he never received such a call. However, claimant could not specifically recall when he called or who he spoke with at that time.

Claimant also testified he attempted to contact employer by phone during the week of Christmas. However, he again could not specifically recall when he made this attempt. He testified no one answered and there was no option to leave a voicemail. Claimant testified that he made no further attempts to contact employer, as he felt he had made sufficient efforts to do so. Of note, claimant did not provide any phone records demonstrating contacts were made as alleged.

On the other hand, Warnick credibly testified employer was open the week of Christmas, except for December 24 and 25; that employer has a 24-hour answer service; that there were no issues with the answering service at that time; and that there is no record of claimant calling during that time. Warnick also credibly testified there is no record of claimant calling prior to his assignment ending. It is business practice to record contacts, and no record of such contacts exist. Warnick also inquired with staff at the local office. All denied having heard from Warnick during the times in question.

The administrative law judge does not find credible claimant's testimony that he attempted to contact employer but there was no way for him to leave a message. Even if this were the case, claimant acknowledged making no further efforts after that time. If claimant had truly wished to keep his employment, he would have made further attempts – for example, in person or via email – but he chose not to. Claimant has not shown good cause for failing to contact employer as required. The administrative law judge further finds that, even if claimant had attempted to contact employer prior to his assignment ending, that does not satisfy employer's assignment policy. That policy requires claimant to contact employer within three working days after the assignment ends, not prior to it ending.

Employer has carried its burden of proving claimant's departure from employment was voluntary. However, claimant has not carried his burden of proving the voluntary leaving was for good cause attributable to employer. As such, claimant is disqualified from benefits.

- II. Was the claimant overpaid benefits? Should claimant repay benefits and/or charge employer due to employer participation in fact finding?

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$399.00 for a total of nine weeks, from the benefit week ending March 7, 2020 and continuing through the benefit week ending April 2, 2020. The total amount of benefits paid to date is \$3,591.00. Because the administrative law judge now finds claimant is disqualified from benefits, he has been overpaid benefits in that amount.

Lewien participated in the fact-finding interview. She provided substantially the same information as was provided during the appeal hearing. Because employer participated in the fact-finding interview and claimant has been overpaid benefits, benefits shall be recovered. The charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund.

DECISION:

The April 1, 2020 (reference 01) unemployment insurance decision that determined claimant was eligible to receive unemployment insurance benefits is REVERSED. Claimant is disqualified from receiving benefits until he earns wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Claimant has been overpaid benefits in the amount of \$3,591.00. Benefits shall be recovered. The charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund.

REMAND:

Claimant offered information suggesting he may have earned wages for insured work equal to ten times his weekly benefit amount subsequent to the separation from employer. This issue is remanded to the Benefits Bureau of IWD for an investigation and decision. The above order as to overpayment is stayed pending a determination on this issue.

If it is determined claimant has requalified by earning the necessary wages for insured work subsequent to separation from this employer, the Benefits Bureau shall issue an appropriate overpayment decision at that time, including a decision regarding potential overpayment of FPUC benefits. If it is determined after investigation that claimant has not requalified, the above order as to overpayment shall become effective and the Benefits Bureau shall also investigate and issue an order as to overpayment of FPUC benefits.



Andrew B. Duffelmeyer
Administrative Law Judge
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May 15, 2020
Decision Dated and Mailed

abd/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.