

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TYLER J OVERSTREET
Claimant

APPEAL NO. 21A-UI-10735-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 02/21/21
Claimant: Respondent (4)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment
Iowa Code Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 1, 2021, reference 02, decision that allowed benefits to the claimant, provided he was otherwise eligible, and that held the employer's account could be charged, based on the deputy's conclusion that the claimant separated from the temporary employment firm on December 10, 2020 with good cause attributable to the employer. After due notice was issued, a hearing was held on July 1, 2021. The claimant did not provide a telephone number for the appeal hearing and did not participate. Melissa Lewien represented the employer and presented testimony through Bobbi Kerby. Exhibit 1 was received into evidence. The administrative law judge took official notice of the Agency's administrative record (DBRO and KPYX), which indicate no benefits have been disbursed to the claimant in connection with the original claim that was effective February 21, 2021 or at any point since the December 2020 separation.

ISSUES:

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

Whether the claimant voluntarily quit for the sole purpose of accepting other employment.

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. The claimant established his employment relationship with ASI in August 2020. As part of that process, the employer reviewed its End of Assignment Policy with the claimant and the claimant electronically signed to acknowledge his obligation to contact the employer within three working days of completing an assignment to request further assignment or be considered to have voluntarily quit and risk being disqualified for unemployment insurance benefits. The employer provided the claimant with a copy of the policy he signed.

The claimant began his most recent assignment on November 4, 2020 and completed the assignment on December 10, 2020, when the client's business slowed and the client no longer

needed the claimant's services. The client provided no guarantee of work hours in the assignment, but the claimant ended up working 32 to 40 hours a week, 6:00 a.m. to 2:30 p.m. On December 11, 2020, ASI Human Resources Coordinator Bobbi Kerby notified the claimant that the assignment was completed and asked whether the claimant was interested in another assignment. At that time, the claimant advised that he was also working in two part-time employments and declined ASI's assistance in locating another assignment. The employer was aware that the claimant was driving a commercial truck for a local auction company and that the claimant was also performing work for his grandfather.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(j) 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.

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.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

The evidence in the record establishes a December 11, 2020 voluntary quit from the ASI employment that was without good cause attributable to that employer. The employer had appropriately notified the claimant of his obligation to contact the employer within three working days of completing an assignment or be deemed to have voluntarily quit and risk being disqualified for unemployment insurance benefits. The parties were in telephone contact on December 11, 2020. The employer specifically inquired whether the claimant was interested in finding another assignment. The claimant specifically declined that assistance and expressed an intention to separate from ASI to focus on two other employments. The employer account of ASI will not be charged. The voluntary quit to focus on other contemporaneous employments did not disqualify the claimant for unemployment insurance benefits. The claimant is eligible for

benefits, provided he is otherwise eligible. Wage credits from the ASI employment shall be assessed to the unemployment compensation fund.

DECISION:

The April 1, 2021, reference 02, decision is modified in favor of the employer/appellant as follows. The claimant voluntarily quit on December 11, 2020 without good cause attributable to this employer and for the sole purpose of accepting other employment. This employer's account shall not be charged. The claimant is eligible for benefits, provided he is otherwise eligible. Wage credits from this employment shall be assessed to the unemployment compensation fund.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

July 15, 2021
Decision Dated and Mailed

jet/scn