

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIA CERVANTES

Claimant

APPEAL 21A-UI-17560-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 02/28/21

Claimant: Respondent (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.5-1-j – Separation from Temporary Employer
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Advance Services (employer) appealed a representative's April 20, 2021, decision (reference 01) that concluded Maria Cervantes (claimant) was eligible to receive unemployment insurance benefits after her separation from work with Advance Services. A hearing was scheduled for September 28, 2021. The employer participated through Melissa Lewien. The employer offered and exhibits 1, 2, 3, D-1, and D-2, were received into evidence. The administrative law judge took official notice of the administrative file and the hearing record established for 21A-UI-11746-SN-T.¹

ISSUES:

- Whether the employer's appeal is timely? Whether it has reasonable grounds to be considered otherwise timely?
- The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that:

The employer is a temporary employment service. The claimant performed services from September 2, 2019 through November 27, 2020. The claimant signed documents on September 10, 2020 and December 1, 2020, indicating she was to contact the employer within

¹ A mistake occurred at intake that resulted in the wrong claim year decision being docketed. This administrative law judge attempted to correct the error by hearing the merits on this decision rather than the one docketed. This was in error. The administrative law judge subsequently vacated the decision 21A-UI-11746-SN-T with an amendment.

three working days following the completion of an assignment to request placement in a new assignment. The employer provided copies of these assignment policies. (Exhibits 1 and 2) The document did indicate the consequences of a failure to notify the employer. The claimant was given a copy of the document which was separate from the contract for hire. The claimant completed her last assignment on February 26, 2021, but did not seek reassignment from the employer. The employer provided a note indicating the claimant did not request reassignment at that time. (Exhibit 3)

The administrative record KFFV does not show that a notice of fact finding was sent to the parties. The administrative record DBRO shows the claimant had not received payment after February 28, 2021 because she has an identification lock on her record.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was separated from employment for a disqualifying reason. The overpayment issue is moot because the claimant was not paid regular unemployment insurance benefits or Federal Pandemic Unemployment Compensation benefits after the separation date.

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:

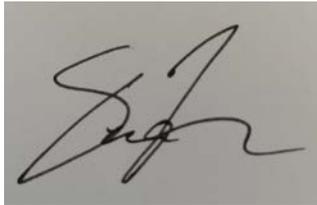
(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Under the Iowa Code the employer must advise the claimant of the three-day notice requirement and give the claimant a copy of that requirement. The notice requirement must be separate from the contract for hire. The employer followed the requirements of the code. The claimant did not. She did not request reassignment. Therefore, benefits are denied.

DECISION:

The representative's April 20, 2021, decision (reference 01) is reversed. The claimant was separated from the employer for no good cause attributable to the employer. The overpayment issues are moot because the claimant did not receive benefits of any kind after the separation. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.



Sean M. Nelson
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September 30, 2021
Decision Dated and Mailed

smn/scn