

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ESTELA ORTIZ DE GARIBAY**  
Claimant

**ADVANCE SERVICES INC**  
Employer

**APPEAL 19A-UI-04613-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/24/19**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

**STATEMENT OF THE CASE:**

On June 7, 2019, the claimant filed an appeal from the May 28, 2019, (reference 02) unemployment insurance decision that denied benefits based on a determination that she failed to notify her temporary employment firm within three working day of the completion of her last work assignment. The parties were properly notified about the hearing. A telephone hearing was held on July 2, 2019. Claimant participated and testified with the assistance of a Spanish language interpreter from CTS Language Link. Employer participated through Risk Manager Melissa Lewien and Human Resource Coordinator Gina Pacheco. Employer's Exhibits 1 and 2 were received into evidence and official notice was taken of the fact-finding documents.

**ISSUE:**

Did the claimant voluntarily quit by not reporting for additional work assignments within three business days of the end of the last assignment?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a packager last assigned at Palmer from March 11, 2019, and was separated from the assignment, but not the employment, on May 1, 2019. Claimant was aware that, under the employer's policies, she must notify them of the assignment ending within three working days. (Exhibit 2). On May 1, 2019, claimant went in to the employer's offices and notified Pacheco that she had been laid off due to a lack of work. It had been claimant's prior experience, that when she notified the employer of an assignment ending, if there was other work available to her, it was offered at the time of the notification. Claimant assumed there was no work available, as none was offered. Claimant did not specifically request any additional assignments, but none were offered to her by Pacheco either. According to Pacheco, claimant did not come in on May 1, but instead of May 2. Pacheco testified other work was available, but was not offered to claimant. Claimant gave no indication that she was unwilling or unable to take a new assignment, but none was offered as she did not specifically ask for it. The next day, claimant's daughter, also an employee of this employer, called and

spoke to someone with the employer. She asked about additional work for herself and the claimant, but was told none was available at the time. Pacheco did not have any information on this conversation.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant's separation was with good cause attributable to the employer.

Iowa Code § 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. (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 lettered paragraph:

(a) "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.

(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 § 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 § 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.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment. Since she contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and there was no work available, no disqualification is imposed. Neither party disputes that claimant notified the employer of her assignment ending within three working days, in accordance with the employer's policies. Although claimant did not use the specific phrase, "Are there other assignments available?", any reasonable employee at a temporary employment firm would understand that an employee reporting an assignment had ended would naturally be seeking other available work, unless given information by the employee to the contrary. That did not happen here. Nevertheless, claimant was not offered a new assignment or even asked about the possibility of a new assignment. It was therefore reasonable, under the circumstances, for claimant to assume no additional work was available. As such, no disqualification is imposed and benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The May 28, 2019, (reference 02) unemployment insurance decision is reversed. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/scn