

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAVERNE J NUNNIKHOVEN
Claimant

APPEAL NO. 14A-UI-01714-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 01/12/14
Claimant: Respondent (2)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment
Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 12, 2014, reference 01, decision that allowed benefits to the claimant, provided she was otherwise eligible, and that held the employer's account could be charged benefits in connection with a January 10, 2014 separation. After due notice was issued, a hearing was held on March 6, 2014. Claimant Laverne Nunnikhoven participated. Michael Payne represented the employer and presented additional testimony through Candi Ashman. The administrative law judge took official notice of the agency's administrative record of benefits paid to the claimant and received Exhibits One and Two into the hearing record.

ISSUES:

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

Whether Ms. Nunnikhoven has been overpaid benefits.

Whether Ms. Nunnikhoven is required to repay benefits.

Whether the employer's account may be charged for benefits paid to Ms. Nunnikhoven.

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. Laverne Nunnikhoven last performed work for the employer in a full-time, temporary work assignment at Pella Corporation. The assignment started in April 2013. Ms. Nunnikhoven worked day-shift hours, Monday through Friday. Ms. Nunnikhoven completed the assignment on January 10, 2014. On Tuesday, January 14, 2014, Ms. Nunnikhoven went to the ASI office in Pella and asked whether Candi Ashman, ASI Office Manager, could assist Ms. Nunnikhoven with an application for unemployment insurance benefits on ASI's computer. Ms. Ashman declined to do by indicating she did not know much about the unemployment insurance. While Ms. Nunnikhoven was at

ASI's office, she did not inquire about additional work and Ms. Ashman did not raise the issue. Ms. Nunnikhoven concedes that this was an oversight on her part. Ms. Nunnikhoven next had contact with ASI on February 7, 2014.

Before Ms. Nunnikhoven started her most recent assignment, ASI had her sign an end-of-assignment policy that obligated her to contact ASI within three working days of the end of an assignment to request another assignment. The policy warned Ms. Nunnikhoven that if she failed to make contact within the required time, it could impact her eligibility for unemployment insurance benefits. The policy document contained one additional policy. Each policy statement had its own signature space where Ms. Nunnikhoven signed to indicate her acknowledgement of the policy. The employer provided Ms. Nunnikhoven with a copy of the policy she signed.

Ms. Nunnikhoven established a claim for benefits that was effective January 12, 2014 and received \$1,390.00 in benefits for the period of January 12, 2014 through February 15, 2014.

The employer participated in the fact-finding interview that led to the February 12, 2014, reference 01, decision that allowed benefits.

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.

The employer's end-of-assignment policy meets the requirements of Iowa Code section 96.5(1)(j). Accordingly, Ms. Nunnikhoven was obligated to contact ASI within three working days of the end of an assignment to request an additional assignment. While Ms. Nunnikhoven did go to the employer's office within three working days of the end of her assignment, she did not go for the purpose of requesting another assignment. While Ms. Nunnikhoven was at the employer's office on January 14, 2014, she gave no indication that she was interested in another assignment. Instead, Ms. Nunnikhoven was interested in help with her application for unemployment insurance benefits. Based on Ms. Nunnikhoven's failure to request a new assignment, the administrative law judge must conclude that the January 10, 2014 separation was a voluntary quit without good cause attributable to the employer. Effective January 10, 2014, Ms. Nunnikhoven is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her benefit amount. Ms. Nunnikhoven must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In

addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$1,390.00 in benefits for the period of January 12, 2014 through February 15, 2014. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits already paid or to be paid in connection with the January 12, 2014 original claim.

DECISION:

The Claims Deputy's February 12, 2014, reference 01, decision is reversed. The claimant's January 10, 2014 separation from the temporary employment agency was without good cause attributable to the temporary employment agency. Effective January 10, 2014, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$1,390.00 in benefits for the period of January 12, 2014 through February 15, 2014. The claimant must repay that amount. The employer's account will not be charged for benefits already paid or to be paid in connection with the January 12, 2014 original claim.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs