

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCO A SALDANA
Claimant

APPEAL NO. 13A-UI-13245-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 10/20/13
Claimant: Respondent (2-R)

Section 96.5-1-j – Voluntary Leaving Temporary Assignment
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Advance Services, Inc. filed a timely appeal from a representative's decision dated November 27, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that he was employed on a temporary basis and fulfilled the contract of employment. After due notice was provided, a telephone hearing was held on December 19, 2013. Although notified, the claimant did not participate. The employer participated by Mr. Michael Payne, Risk Manager, and Ms. Mindy Taylor, Manager. Employer's Exhibits A and B were received into evidence.

ISSUE:

The issue is whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Marco Saldana began employment with Advance Services, Inc. on August 21, 2012. At the time of hire Mr. Saldana signed an agreement that he would contact the temporary employment service within three working days of the completion of each job assignment to give the temporary employment service notice of his availability for additional work.

Mr. Saldana was assigned to work at Syngenta Seed Company as a general worker from August 21, 2012 until the assignment ended on October 4, 2012. The claimant was informed that the assignment was ending by the client, however, Mr. Saldana did not contact Advance Services, Inc. after that assignment ended to establish his availability for additional work as required by the agreement entered into by the parties at the time of Mr. Saldana's hire.

It is the employer's position they are a temporary staffing service and that the claimant was not hired to work for only one assignment and that he had an obligation to contact the temporary employment service per the agreement in effect between the parties but did not do so.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes claimant voluntarily left employment without good cause attributable to the employer.

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 evidence in the record establishes that Mr. Saldana was informed at the time of hire of his obligation to contact Advance Services, Inc. within three working days of the completion of each temporary work assignment. Mr. Saldana agreed to this provision in writing, however, the claimant did not contact the temporary employment service after his assignment with Syngenta Seeds ended on October 4, 2012 as agreed.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be re-assigned to continue working. In this case the claimant gave the employer no notice of his availability and, therefore, is considered to have quit employment even though the claimant may have returned to work for the temporary agency at some later date. Benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination as to whether there has been an overpayment and the amount of the overpayment. The claimant is liable to repay any overpayment of unemployment insurance benefits as the employer participated in fact finding in this matter.

DECISION:

The representative's decision dated November 27, 2013, reference 01, is reversed. Claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, providing that he is otherwise eligible. The issue of whether there has been an overpayment and the amount of the overpayment is remanded to the Claims Division for determination. Claimant is liable to repay any overpayment of unemployment insurance benefits as the employer participated in fact finding in this matter.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs