

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERMAINE MCCLAY
Claimant

APPEAL NO: 14A-UI-04036-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 07/07/13
Claimant: Appellant (2)

Section 96.5(1) – Voluntary Leaving
871 IAC 24.26(19 & 22) – Voluntary Leaving
Section 96.5-1-j – Reassignment from Employer

STATEMENT OF CASE:

The claimant filed a timely appeal from the April 7, 2014, reference 05, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 7, 2014. The claimant participated in the hearing. Michael Payne, Risk Manager and Tamara Rundle, Office Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left his employment and whether he sought reassignment from the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time warehouseman for Advance Services last assigned to Heinz from April 9, 2013 to March 7, 2014. The claimant's assignment ended due to the client notifying the claimant and employer the claimant was not a "good fit."

The employer's policy states that an employee must contact the employer within three business days of the completion of an assignment or he will be considered to have voluntarily quit his position with the employer (Employer's Exhibits One and Two). The policy is stated in the second to last bullet point in Employer's Exhibit One and in the top paragraph of Employer's Exhibit Two. Those documents are signed by the employee on his first day of employment.

On March 6, 2014, Office Manager Tamara Rundle contacted the claimant to "make sure he understood the assignment was over." Heinz had notified the parties of the end of the assignment before the claimant reported for his 12:00 p.m. shift March 4, 2014. Ms. Rundle attempted to contact the claimant after learning of the end of that assignment March 4, 2014, but was unable to reach him at that time and did not leave a message. On March 6, 2014, the claimant noticed Ms. Rundle had called him March 4, 2014, and returned her call. The claimant was aware he had to contact the employer within three business days after the completion of an

assignment and consequently considered his phone call with Ms. Rundle to count as that contact as it did not make sense to him that he would have to turn around and call Ms. Rundle back and tell her the assignment was over. He assumed the employer knew he wanted another assignment after he spoke to Ms. Rundle. They did not discuss whether the claimant was available for another assignment or that he would have to make another phone call to the employer and state his assignment was over for the employer to consider him to have met the "contact within three business days" requirement.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was not disqualifying.

Iowa Code section 96.5(1) 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.

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.

The claimant was notified by Heinz the assignment was over and believed he had satisfied the employer's requirement that he call the employer within three business days when he returned Ms. Rundle's phone call on March 6, 2014, which was clearly within the three days after the end of the assignment. Ms. Rundle did not tell the claimant the employer believes the claimant had to initiate the original call for it to count as contact within three days of the completion of the assignment or ask him if he was available for another assignment. While the employer certainly is not expected to call all employees and check in with them to see if they are available for further work, when the employer calls the employee within the three-day time frame and speaks to him during those three days, it is not unreasonable for the employee to believe that contact satisfies the three-day requirement. It appears that the employer is more interested in semantics and "hiding the ball" from employees with regard to reminding them they need to call in and request further work, specifically on those occasions when it personally speaks to the employee and notifies him of the end of an assignment, as stated in the policy the employee signs at the beginning of his first assignment, quite often several months earlier. Under these circumstances, the administrative law judge must conclude the claimant met the employer's requirements. Therefore, benefits are allowed.

DECISION:

The April 7, 2014, reference 05, decision is reversed. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css