

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARLIN K HODGE**

Claimant

**APPEAL NO. 14A-UI-08966-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**

Employer

**OC: 08/03/14**

**Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) - Discharge

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 27, 2014, reference 01, decision that allowed benefits to the claimant in connection with a May 21, 2014 separation provided the claimant was otherwise eligible and that held the employer's account could be charged for benefits. After due notice was issued, a hearing was held on September 16, 2014. Claimant Marlin Hodge participated. Michael Payne represented the employer and presented additional testimony through Taylor Henderson. Exhibit One was received into evidence. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purposes of determining whether the employer participated in the fact-finding interview and determining whether the claimant engaged in fraud and/or dishonesty in connection with the fact-finding interview.

**ISSUE:**

Whether the claimant separated from the employment in May 2014 for a reason that disqualifies him for benefits or that relieves the employer of liability for benefits.

**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. Marlin Hodge began getting work through ASI in 2010. On May 1, 2014, Mr. Hodge started a temp-to-hire work assignment at APC in Boone. At the end of the day on Friday, May 9, 2014, Mr. Hodge suffered injury to his right hand while working in the assignment at APC. Mr. Hodge did not know how seriously he was injured until the evening of May 9, 2014, after he had left work. On Monday morning, May 12, 2014, Mr. Hodge reported his injury to his supervisor at APC, who told him not to report for work, but to contact ASI instead. Mr. Hodge did as directed. ASI sent Mr. Hodge for a medical evaluation and for a post-accident drug test. The health care provider selected by ASI placed Mr. Hodge on a light-duty work restriction and restricted Mr. Hodge from lifting any more than five pounds with his right hand. Taylor Henderson, Human Resources Coordinator for the ASI office located in Ames, sent Mr. Hodge back to work at APC on May 14, 2014. On that day, Mr. Hodge was assigned to push a broom, rather than to perform the more physically taxing

duties he had performed earlier in the assignment. Ms. Henderson then notified Mr. Hodge that ASI was going to place Mr. Hodge in a different assignment. In other words, ASI and/or APC ended the assignment at APC and there was mutual understanding that ASI would be contacting Mr. Hodge regarding his next assignment. ASI's worker's compensation representative, Keesha Bruce, later erroneously documented that Mr. Hodge was absent without notifying the employer on May 15 and 16, 2014, when Mr. Hodge was in fact waiting for ASI to advise him of his next work assignment.

On May 20, 2014, Ms. Henderson notified Mr. Hodge that he was going to be placed in a temporary, light-duty assignment at Pizza Hut in Ames on Wednesday, May 21, 2014. The light-duty assignment involved holding a sign on the corner outside Pizza Hut to attract attention to that business. Mr. Hodge understood the assignment to be a one-day assignment. Ms. Henderson notified Mr. Hodge that the hours in the assignment would be 10:00 a.m. to 4:00 p.m. Mr. Hodge's hours in the APC assignment had been 5:30 a.m. to 1:30 p.m. Mr. Hodge has a son who attends second grade in Ames. On Wednesdays, the Ames schools release students early and Mr. Hodge's son is released at 2:05 p.m. Mr. Hodge's wife works in a factory and is not available to pick up their child on early-release days. While the APC work schedule worked well with Mr. Hodge's parental duties, the temporary, light-duty assignment at Pizza Hut did not work well with those duties. Mr. Hodge addressed this issue with Ms. Henderson on May 20. Ms. Henderson told Mr. Hodge he could leave earlier than 4:00 p.m. to collect his son and that Mr. Hodge should notify the supervisor at Pizza Hut. Mr. Hodge accepted the assignment at Pizza Hut.

On May 21, 2014, Mr. Hodge arrived at the Pizza Hut assignment at 11:00 a.m., an hour later than the scheduled start. At 1:30 p.m., Mr. Hodge left the assignment to collect his son from school. Mr. Hodge notified the supervisor at Pizza Hut before he departed from that business.

On May 22, On May 21, 2014, Mr. Hodge arrived at the Pizza Hut assignment at 11:00 a.m., an hour later than the scheduled start. At 1:30 p.m., Mr. Hodge left the assignment to collect his son from school. Mr. Hodge notified the supervisor at Pizza Hut before he departed from that business.

On May 22, 2014, Mr. Hodge's supervisor contacted Ms. Henderson. At that time, Ms. Henderson told Mr. Hodge to come back after he was released by the doctor to return to work without restrictions. Several weeks later, a doctor released Mr. Hodge to return to work without restrictions. Mr. Hodge subsequently received a letter from ASI in which the employer asserted that Mr. Hodge had voluntarily quit. Mr. Hodge had not voluntarily quit.

## **REASONING AND CONCLUSIONS OF LAW:**

After carefully considering the testimony, that administrative law judge concludes that the claimant's testimony is more credible and reliable than the testimony provided by the employer, especially that testimony provided by Ms. Henderson. The evidence indicates that Ms. Henderson did not document her contact and conversations with Mr. Hodge. While Ms. Henderson had many employees and employee contacts to keep track of, Mr. Hodge had only one employee's contacts to keep track of, his own. The weight of the evidence indicates not only that Ms. Henderson did not accurately keep track of her discussions with Mr. Hodge, but that there was additional miscommunication between the employer's Ames staff and worker's compensation staff in Atlantic concerning Mr. Hodge's conduct and employment status. Mr. Hodge did not walk off the assignment at APC or Pizza Hut. Mr. Hodge was not a no-call, no-show on May 15, 16 or 22, 2014. Though Mr. Hodge was late for the Pizza Hut assignment on May 21, 2014, his early departure that day had been pre-approved by Ms. Henderson. If

Ms. Henderson intended for the assignment at Pizza Hut to last longer than a day, Ms. Henderson did not communicate that Mr. Hodge. Instead, Ms. Henderson directed Mr. Hodge to return when he was released to work without restrictions.

In Wills v. Employment Appeal Board, the Supreme Court of Iowa held that an employee did not voluntarily separate from employment where the employee, a C.N.A., presented a limited medical release that restricted the employee from performing significant lifting, and the employer, as a matter of policy, precluded the employee from working so long as the medical restriction continued in place. See Wills v. Employment Appeal Board, 447 N.W.2d 137 (Iowa 1989). In Wills, the Court concluded that the employer's actions were tantamount to a discharge.

In the present case, Ms. Henderson's directive that Mr. Hodge return when he was released to work without restrictions was tantamount to a discharge. The discharge was not based on misconduct in connection with the employment and would not disqualify Mr. Hodge for unemployment insurance benefits. Mr. Hodge is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

**DECISION:**

The claims deputy's August 27, 2014, reference 01, decision is affirmed. The claimant was discharged effective May 22, 2014. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs