

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL J MORROW
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 16A-UI-08497-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/03/16
Claimant: Appellant (1)

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 27, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 23, 2016. Claimant participated. Employer participated through risk manager Melissa Lewien.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was last assigned at Pioneer in Aurelia, Iowa, from September 21, 2015, to April 29, 2016. After the assignment ended, claimant failed to report to the employer within three working days and request further assignment as required by written policy.

On April 22, 2016, the client (Pioneer) notified the employer that claimant was no longer needed and his last day was going to be April 29, 2016. Ms. Samantha Hall, on behalf of the employer, then notified claimant on the same day (April 22, 2016) that his last day was going to be April 29, 2016.

On April 22, 2016, claimant did not request an additional assignment. On April 29, 2016, claimant did not request an additional assignment. Claimant did not request an additional assignment the three business days following April 29, 2016 (May 2, 3, and 4, 2016).

On May 3, 2016, Ms. Hall documented that claimant called the employer and asked what to do. Ms. Hall asked claimant what he wanted to do moving forward. Claimant stated he wanted to stay laid off from work so he could work on his house. Claimant stated he wanted to return to Pioneer next season. Claimant did not request any additional assignments.

The employer does have a policy that complies with the specific terms of Iowa Code § 96.5(1)(j). Claimant signed the policy on September 18, 2015, and he was given a copy of the policy.

The employer documents phone calls and conversations with employees. Ms. Hall documented her conversation with claimant on May 3, 2016. Claimant has not contacted the employer requesting an additional assignment. The employer did not offer claimant an additional assignment after his assignment ended, because claimant did not request an additional assignment. The employer had assignments that were available.

On July 20, 2016, Ms. Hall contacted claimant about returning on assignment at Pioneer in September 2016. Claimant stated he was interested in returning back to Pioneer on assignment. Ms. Hall contacted claimant on August 23, 2016, about starting his assignment in September 2016 at Pioneer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without 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 paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce 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 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 purpose of the statute is to provide notice to the temporary agency employer that claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The plain language of the statute allows benefits for a claimant “who notifies the temporary employment firm of completion of an employment assignment *and* who seeks reassignment.” Iowa Code § 96.5(1)(j)(1) (Emphasis added).

Claimant was aware of the employer’s policy requiring him to request an additional assignment within three business days of his assignment ending. Although claimant contacted the employer on May 3, 2016, which was within three business days of his assignment ending, he did not request an additional assignment. Furthermore, claimant told Ms. Hall that he preferred to remain on a layoff so he could work on his house and wait until September 2016, when he could be reassigned at Pioneer. It was reasonable for the employer to construe claimant’s preference to remain on layoff as him not requesting an additional assignment.

In this case, the employer had notice of the claimant’s availability because it notified him of the end of the assignment but he did not request another assignment and, therefore, is considered to have quit the employment, even though he may return to work for the temporary agency at some later date. Benefits are denied.

DECISION:

The July 27, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant’s separation was not attributable to the employer. Benefits are withheld until such time as claimant works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs