

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH E FITZSIMMONS
Claimant

APPEAL NO. 17A-UI-05139-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 03/26/17
Claimant: Appellant (2)

Section 96.5-1-j – Separation from Temporary Employer
Section 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

Sarah Fitzsimmons (claimant) appealed a representative's April 19, 2017, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits due to her separation from work with Advance Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 1, 2017. The claimant participated personally. The employer participated by Melissa Lewien, Risk Manager. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services for Pioneer from June 7, 2016, to February 3, 2017, and February 13, 2017, to March 17, 2017. She signed an electronic document on May 18, 2016, that was on a website. The document, End of Assignment Policy, indicated she was to contact the employer within three days following the completion of an assignment to request placement in a new assignment. The document said she had received a copy of the document but the employer did not send her one. The claimant did not have access to a printer or the website after she signed the document and logged out. The claimant completed her last assignment on May 17, 2017. She called the employer's number repeatedly on March 20, 2017, but it was busy. The claimant wondered if the telephone was off the hook. She remembers calling again and getting a busy signal on March 21, 2017. On March 24, 2017, the claimant left a message.

A disqualification decision was mailed to the claimant's last known address of record on April 19, 2017. She did not receive the decision within ten days. She received the decision on May 16, 2017. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by May 1, 2017. The appeal was filed on May 16, 2017.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received until May 16, 2017. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant appealed the disqualification decision the day she received it. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant was separated from the employer for a disqualifying reason.

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.

Under the Iowa Code the employer must advise the claimant of the three day notice requirement and give the claimant a copy of that requirement. The notice requirement must be separate from the contract for hire. The employer did not provide the claimant with the proper notice requirements by providing her with a copy of the End of Assignment Policy. The employer assumed the claimant would make her own copy. It has, therefore, failed to satisfy the requirements of Iowa Code Section 96.5-1-j. Benefits are allowed.

DECISION:

The April 19, 2017, reference 01, decision is reversed. The appeal in this case was timely. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs