

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHAWNDRÉ D HINES
Claimant

ADVANCE SERVICES INC
Employer

APPEAL NO. 20A-UI-09425-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Respondent (2R)

Iowa Code Section 96.5(1)(j) – Separation from Temporary Employment
Iowa Code Section 96.3(7) – Recovery of Overpaid Benefits
Public Law 116-136, Section 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 31, 2020, reference 02, decision that allowed benefits to the claimant, provided he met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant had separated from the employer on April 17, 2020 separation was for good cause attributable to the temporary employment firm. After due notice was issued, a hearing was held on September 23, 2020. The claimant did not provide a telephone number for the hearing and did not participate. Melissa Lewien, Risk Management, represented the employer and presented additional testimony through Maria Garcia and Daniel Strong. Exhibits 1, 2 and 3 were received into evidence. The administrative law Judge took official notice of the Agency's administrative record of benefits paid to the claimant (DBRO and KPYX). The administrative law judge took official notice of the fact-finding interview coversheet for the purpose of documenting the employer's participation in the fact-finding interview.

ISSUES:

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.
Whether the claimant was overpaid regular unemployment insurance benefits.
Whether the claimant must repay overpaid regular unemployment insurance benefits.
Whether the claimant was eligible for Federal Pandemic Unemployment Compensation (FPUC) or whether the FPUC benefits the claimant received were an overpayment of benefits.
Whether the employer's account may be charged.

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. The claimant established his employment relationship with ASI in February 2019. On November 1, 2019, the claimant electronically signed to acknowledge the Advance Services, Inc. End of Assignment Policy, which stated:

I understand that it is my responsibility to contact Advance Services, Inc. within three working days after my assignment ends to request further assignments or I will be considered to have voluntarily quit. Failure to do so could affect my eligibility for unemployment insurance benefits.

I have read these policies and I understand the ramifications of my actions as stated in these policies. I received a copy of these policies for my records.

The End of Assignment Policy appeared on a single-page policy document with one other policy statement. The employer provided the claimant with a copy of the policy statement he electronically signed to acknowledge.

In January 2020, the claimant began a full-time, temp-to-hire assignment at L & L. The claimant's work hours were 6:00 a.m. to 2:30 p.m., Monday through Friday. The claimant last performed work in the assignment on or about April 20, 2020. On that day, L & L notified ASI Office Manager Maria Garcia that L & L was ending the assignment due to attendance. L & L referenced a most recent absence occurring on April 15, 2020, when the claimant notified L & L that he would be absent due to a stomachache. If the claimant needed to be absent from the assignment, ASI policy required that the claimant notify ASI at least one hour prior to the scheduled start of his shift and also notify the client business, L & L. The employer had communicated the policy to the claimant. The claimant had not notified ASI regarding the need to be absent on April 15, 2020. At the time L & L notified ASI that it was ending the assignment for attendance, L & L referenced four additional absences. L & L reported that the claimant had called in sick on March 23, had reported late on March 31 due to lack of a babysitter, had been absent on April 6 due to a sick child, and had reported late on April 13 due to oversleeping.

On April 20, 2020, Ms. Garcia left a voicemail message for the claimant to let him know that L & L had ended the assignment and to request that the claimant call ASI. The claimant contacted ASI on April 22, 2020 and spoke with ASI representative Daniel Strong. The claimant inquired whether he could get unemployment insurance benefits in light of being let go from the L & L assignment. Mr. Strong told the claimant he was unable to provide information regarding unemployment. The claimant did not request an additional assignment. Despite the attendance concern raised by L & L, ASI was willing to place the claimant in an additional assignment. During the contact on April 22, Mr. Strong offered the claimant two additional assignments, which the claimant declined. The claimant told Mr. Strong that he preferred to pursue unemployment insurance benefits.

The claimant established an original claim for unemployment insurance benefits that was effective April 26, 2020. Iowa Workforce Development set the weekly benefit amount for regular state benefits at \$162.00. ASI is a base period employer. The claimant made weekly claims for each week between April 26, 2020 and September 12, 2020 and received \$3,240.00 in regular benefits for that period. The claimant also received \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for each week between April 26, 2020 and July 25 2020. The FPUC benefits totaled \$7,800.00. The claimant also received \$1,800.00 in Lost Wages Assistance (LWA) for the six weeks between July 26, 2020 and September 5, 2020.

Before the Benefits Bureau deputy entered the July 31, 2020, reference 02, decision, the deputy contacted ASI and the employer participated in a cold call fact-finding interview concerning the claimant's separation from employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)(j) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 evidence in the record establishes an April 22, 2020 voluntary quit without good cause attributable to the employer. The employer duly notified the claimant in writing of the claimant's obligation to contact the temporary employment firm within three working days of completing an assignment to request a new assignment. The claimant contacted the employer within that timeframe, but not for the purpose of requesting a new assignment. Instead, the claimant requested information concerning unemployment insurance benefit eligibility. The employer offered additional assignments, which the claimant declined. The claimant elected to voluntarily separate from the employer. The claimant did not participate in the appeal hearing and did not present any evidence to establish good cause attributable to the employer for his decision to voluntarily separate from the employment. Based on the voluntary quit without good cause attributable to the employer, the claimant is disqualified for unemployment insurance benefits until he has worked in and been paid wages equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements.

The unemployment insurance law requires that regular benefits be recovered from a claimant who receives benefits and is later deemed ineligible for benefits, even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment of regular benefits when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

The claimant received \$3,240.00 in regular unemployment insurance benefits for the period of April 26, 2020 through September 12, 2020, but this decision disqualifies the claimant for those benefits. Accordingly, the regular unemployment insurance benefits the claimant received constitute an overpayment of benefits. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpaid regular benefits.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Because this decision disqualifies the claimant for regular unemployment insurance benefits, the claimant is also disqualified for the \$7,800.00 in FPUC benefits that he received for the period of April 26, 2020 through July 25, 2020. The FPUC benefits constitute an overpayment of benefits that the claimant must repay.

DECISION:

The July 31, 2020, reference 02, decision is reversed. The claimant voluntarily quit on April 22, 2020 without good cause attributable to the employer. The claimant is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$3,240.00 in regular state benefits for the period of April 26, 2020 through September 12, 2020. The claimant is overpaid \$7,800.00 in FPUC benefits for the period of April 26, 2020 through July 25, 2020. Claimant must repay the overpaid regular benefits and FPUC benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid for the period beginning April 26, 2020.

This matter is **remanded** to the Benefits Bureau for entry of an overpayment decision concerning the \$1,800.00 in Lost Wages Assistance (LWA) benefits the claimant received for the period of July 26, 2020 through September 5, 2020.

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**



James E. Timberland
Administrative Law Judge

November 13, 2020
Decision Dated and Mailed

jet/scn