

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARTIN E SIMMONS
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 15A-UI-13680-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/15/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 9, 2015, (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on January 5, 2016. Claimant participated. Employer participated through risk manager Michael Payne and Pella office manager Tiffany Visser. Employer's Exhibits 1 and 2 were received.

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 reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an assembler/laborer assigned at Pella Corp. from March 13, 2015, and was separated from the assignment on November 17, 2015. Visser notified him by telephone the evening of November 12 that the assignment had ended and Pella Corp. no longer needed his services. Other work was available but Visser did not mention it. Claimant received a copy of the three-day reporting policy and interpreted it to mean three calendar days so on November 13 he called the Pella office using a prepaid cell phone. No record of calls is available from a prepaid phone. He spoke to Joy Hol asking if he could be rehired at Pella Corp. in the spring when business picked up again and told her he would also be interested in other work in the Oskaloosa and Pella area. She did not tell him work was available as Visser claimed at hearing. No record of the communication was entered in the log, which the employer did not provide. The employer considered the employment to have ended on November 17, 2015, when there was no further log of communication from the claimant or access to the claimant's account. On November 19 claimant went to get copies of paystubs and he recalled the printer broke.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was with 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. 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.

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 § 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 § 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 the claimant is available for and seeking work at the end of the temporary assignment. Since the employer notified claimant the assignment had ended it had notice of his availability from that perspective. Since Visser knew there was work available but did not mention it to claimant, her statement at hearing that the employer wanted to place him in another assignment is not believable. The employer's mere assertion that no log entry by Hol on November 12 is evidence that claimant did not communicate with the employer does not overcome claimant's rebuttal in some detail that he did contact Hol the following day seeking reassignment or other work. Thus, no disqualification is imposed.

DECISION:

The December 9, 2015, (reference 01) unemployment insurance decision is reversed. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css