

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIA I GARCIA**  
Claimant

**APPEAL NO. 13A-UI-13302-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**  
Employer

**OC: 08/04/13**  
**Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.5-1-j – Separation from Temporary Employment  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated December 3, 2013, reference 04, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on December 19, 2013. The claimant participated personally. The employer participated by Michael Payne, risk management, and Raquel Palimno, human resources coordinator. The record consists of the testimony of Maria Garcia; the testimony of Michael Payne; the testimony of Raquel Palimno; and Employer's Exhibits 1 and 2. Ike Rocha served as Spanish interpreter.

**ISSUE:**

Whether the claimant voluntarily left for good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a staffing agency. The claimant accepted an assignment on August 29, 2013. She was assigned to Palmer Candy as a packager. The client ended the claimant's assignment on November 5, 2013, because she was not a good fit. The claimant did not ask for another work assignment until November 18, 2013.

The claimant did sign a separate form indicating that she would contact the employer within three working days after the end of her shift or be considered a voluntary quit.

The claimant established a claim for unemployment insurance benefits with an original claim date of August 4, 2013. She reopened the claim for the week ending November 9, 2013. She has been paid five weeks of unemployment insurance benefits. The employer participated in the fact-finding interview.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

The claimant is not eligible for unemployment insurance benefits. The greater weight of the evidence is that the claimant did not ask for another assignment until November 18, 2013. The claimant did testify that she asked Raquel for another job but Ms. Palimno testified credibly that the claimant did not request an assignment until November 18, 2013. This testimony was corroborated by the employer's records according to Mr. Payne. No contact was recorded until November 18, 2013. The employer complied with the requirements of Iowa Code Section 96.5-1-j. The claimant is deemed to have voluntarily quit without good cause attributable to the employer. Benefits are denied.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment 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 employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code Section 96.3-7-a-b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

**DECISION:**

The decision of the representative dated December 3, 2013, reference 04, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The claimant has been overpaid unemployment insurance benefits and those benefits must be repaid. The employer's account (279311-000) will not be charged.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs