

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JUAN SOLIS-GOMEZ

Claimant

APPEAL NO. 14A-UI-11031-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 10/05/14

Claimant: Respondent (2)

Iowa Code § 96.5-1-j - Voluntary Quit of Temporary Employment

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Advance Services, Inc. (employer) appealed an unemployment insurance decision dated October 21, 2014, (reference 01), which held that Juan Solis-Gomez (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 12, 2014. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Risk Manager Michael Payne. Employer's Exhibits One and Two were admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

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 agency and the claimant was initially hired on July 18, 2013. On July 11, 2014, he signed an End of Assignment Policy printed in Spanish, which advised him of the requirement to check in for additional work after the completion of an assignment. The employer requires employees to check in within three working days after an assignment ends to provide the employer notification of the claimant's availability and failure to do so would be considered as a voluntary quit. The claimant was given a copy of the End of Assignment Policy, which is not part of the application or contract of employment.

The claimant was assigned to Syngenta Seeds, Inc. in Lone Tree, Iowa on July 14, 2014. At that time, he was given a Job Assignment Sheet, which provided all the detail information about the assignment, as well as his responsibilities as an employee of Advance Services. The job assignment sheet again advised him that he was required to check in for work within three days

following the completion of an assignment. Syngenta ended the claimant's assignment on October 3, 2014, due to his excessive speed when using the forklift. The claimant was eligible for other assignments but never checked in with the employer for additional work.

The claimant filed a claim for unemployment insurance benefits effective October 5, 2014, and has received benefits after the separation from employment in the amount of \$965.00. Risk Manager Michael Payne participated in the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1. The employer herein is a temporary employment agency and temporary employment agencies are governed by Iowa Code § 96.5-1-j, which places specific restrictions on both the employer and the employee with regard to unemployment insurance benefits.

To be disqualified from receiving benefits, at the time of hire the employer must advise the individual in writing of the three-day notification rule and the employer did so in this case. The employer must also notify the individual that he may be disqualified from receiving unemployment insurance benefits if he fails to notify the employer and fails to request additional work. Iowa Code § 96.5-1-j. The claimant was given a copy of the End of Assignment Policy, which advised him that failure to follow these instructions would be considered a voluntary quit. This policy the claimant signed was printed in Spanish so there would be no misunderstandings.

The evidence indicates the claimant knew or should have known he was required to contact the employer within three days after the completion of his assignment so the employer knew whether he was available for additional assignments. The claimant did not contact the employer after the end of his assignment. He failed to participate in the hearing and no good cause has been established for his failure to comply with his legal requirement. Benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received benefits in the amount of \$965.00 as a result of this claim. A waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount.

DECISION:

The unemployment insurance decision dated October 21, 2014, (reference 01), is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his

weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$965.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css