

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUAN A SOLIS-GOMEZ**

Claimant

**APPEAL NO. 15O-UI-02887-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**

Employer

**OC: 10/05/14**

**Claimant: Respondent (1)**

Section 96.5(1)j – Timely Request for Another Job Assignment

**STATEMENT OF THE CASE:**

Advance Services, Inc. filed a timely appeal from a representative's decision dated October 21, 2014 (reference 01) which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on December 12, 2014. Claimant did not participate. The employer participated.

On November 4, 2014 the administrative law judge's decision was entered, reversing the adjudicator's determination, finding that the claimant had voluntarily left employment without good cause attributable to the employer. The decision also found that the claimant had been overpaid unemployment insurance benefits in the amount of \$965. The claimant appealed the administrative law judge decision to the Employment Appeal Board. On December 18, 2014 the Employment Appeal Board remanded the matter to the Unemployment Insurance Appeals Bureau for a new hearing, specifying that the previous notice of hearing in the English language did not afford the claimant due process notice for the hearing that was held on December 12, 2014. A telephone hearing was scheduled. Although the new notice again was not in the Spanish language, the claimant received the assistance from Iowa Legal Aid who translated the notice of hearing for the claimant. The claimant participated in the hearing. The hearing was held on January 15, 2015. The claimant was represented by Ms. Lorraine Gaynor, Attorney with Iowa Legal Aid. The employer participated by Mr. Michael Payne, Risk Manager. The official interpreter was Ms. Anna Pottebaum. Employer's Exhibits A and B and Claimant's Exhibits One and Two were admitted into evidence.

On January 16, 2015, an administrative law judge decision was entered affirming the adjudicator's determination; finding that the claimant left employment with good cause attributable the employer. The employer appealed the decision to the Employment Appeal Board, asserting that the employer did not have sufficient time in the one hour and 19 minute hearing on January 15, 2015 to cross-examine the claimant and to provide rebuttal testimony. On March 4, 2015 the Employment Appeal Board remanded the matter back to the Appeal Bureau for further development of the record, giving the employer further opportunity to cross-examine the claimant and an opportunity for rebuttal.

In compliance with the Appeal Board's directive, notice was sent to the parties and a telephone hearing was held on April 2, 2015. The claimant participated, participating on behalf of the claimant was Ms. Lorraine Gaynor, Attorney with Iowa Legal Aid. Participating on behalf of the employer was Mr. Michael Payne, Risk Manager. Official interpreter was Ms. Anna Pottebaum.

**ISSUE:**

The issue is whether the additional evidence, in the form of cross-examination and rebuttal testimony, is sufficient to change the administrative law judge's decision dated January 16, 2015; finding that the claimant left employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: Juan Solis-Gomez was employed by Advance Services, Inc. (a temporary employment service) beginning on November 8, 2013. Mr. Solis-Gomez was last employed by Advance Services, Inc. from July 13, 2014 until October 3, 2014 when he was informed by a representative of Advance Services, Inc. that the assignment at Segenta Seeds had ended at the client's request because Mr. Solis-Gomez had driven a forklift "too fast." The claimant was last assigned to work Segenta Seed Company as a general laborer and was being paid by the hour. At the time that Mr. Solis-Gomez began employment with Advance Services, Inc. he was provided with and signed an agreement requiring him to give notice to the temporary employment service within three business days following the completion of each assignment, of his availability to accept future work assignments. The document also informed the claimant that his failure to do so would be considered to be a voluntary quit and that it might affect his unemployment insurance benefits.

On October 3, 2014, the claimant was informed that the assignment at Segenta Seeds had ended. He was informed of this by a representative of Advance Services, Ms. Martinez. The claimant questioned Ms. Martinez at that time about the availability of any other work assignments through Advance Services and the possibility of returning to work at the Segenta Seeds assignment. He was told at that time that no work was available. On Monday, October 6 and Tuesday, October 7, 2014, the claimant called one of the telephone numbers specifically provided to him by Advance Services to inquire about additional work or returning to Segenta. On October 8, 2014, he called and left a message inquiring about other work. The claimant received no offers of work by Advance Services.

Because Mr. Solis-Gomez's direct contact with Ms. Martinez on October 3, 2014 and his telephone calls to the company had not been entered company records by company employees, the employer believed that Mr. Solis-Gomez had not complied with the requirement that he call in and make himself available for other assignments within three working days. It is the employer's position that although the claimant's assignment was ended by the client employer because the claimant drove a forklift too fast, the separation from the client employer at that time was not considered misconduct sufficient to preclude the claimant from being assigned to other client employers or back to Segenta Seeds.

During the April 2, 2015 remand hearing in this matter, Mr. Payne was given an additional opportunity to cross-examine Mr. Solis-Gomez on the testimony that the claimant had provided during the January 15, 2015 hearing. During his cross-examine Mr. Payne focused first on the one minute length of time that was recorded in the claimant's telephone records for each of the calls made to the employer's telephone number on October 6, 7, and 8, 2014. Mr. Payne questioned the claimant about whether he could have had time to inquire about the availability of work during a one-minute call because a certain portion of the one minute would have been taken up with dialing and the call being answered at the employer location. Mr. Payne asserted in his rebuttal testimony that it was his belief that in such a small amount of time the claimant would not have had an opportunity to inquire about other work.

The second focus of Mr. Payne's cross-examination was about a December 8, 2014 conversation wherein the claimant made an inquiry about how to apply for more work at Segenta Seeds as an Advance Services employee. Mr. Payne asserted in his rebuttal testimony that the claimant's questioning about how to reassign to Segenta Seeds was not consistent with the claimant's previous testimony that he had contacted Advance Services in October 2014 when the assignment had ended.

The third issue that Mr. Payne questioned the claimant about was how a previous assignment through Advance Services had ended and whether or not Mr. Solis-Gomez had been laid off from that assignment or had quit. Mr. Payne asserts that the claimant may have provided conflicting information on that job separation that had occurred in the past.

### **REASONING AND CONCLUSIONS OF LAW:**

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.

In this case, the evidence establishes that the employer at the time of hiring advised Mr. Solis-Gomez in English and Spanish of the three-day notification rule and that his failure to notify the temporary employment service within three working days of his availability for more assignments might be considered to be a voluntary quit and affect his unemployment insurance benefits.

Mr. Solis-Gomez was aware of the rule and made a direct inquiry to an Advance Services representative whether any other jobs were available to him. This inquiry was made at the time that the claimant was informed that his job with Segenta had ended. The record also establishes that the claimant called Advance Services on two or more occasions, within three working days; calling a telephone number provided to him by a representative of Advance Services to inquire about additional work. The purpose of the statute is to provide notice to the temporary agency employer that the claimant was available for work at the conclusion of the temporary assignment. In this case, the employer had notice of the claimant's availability because they notified him at the end of the assignment and the claimant had inquired at that time about more work. The hearing record also establishes that the claimant made additional efforts to establish his availability for additional assignments by calling and speaking to an Advance Services representative on two occasions within three business days and leaving a message on the third occasion within three business days. The administrative law judge concludes that the claimant left employment with good cause attributable to the employer. The claimant had been informed that his most recent assignment had ended and had met the statutory requirements of providing notice to the temporary employment service of his availability for additional assignments as required.

By directive of the Employment Appeal Board in its remand order, the employer was given an additional opportunity beyond the one hour and 19 minute hearing in this matter to cross-examine Mr. Solis-Gomez further and to provide rebuttal testimony from the employer's side of the matter. In its cross-examination of Mr. Solis-Gomez, the claimant was steadfast in his answers to questions about the temporary employment service had been notified of the claimant's availability of work, both by in-person contact and by telephone calls to a number provided to employees by Advance Services, Inc. Mr. Solis-Gomez was also steadfast in his answers about the length of calls and whether he had time to inform the temporary employment service of his availability during the calls.

Although the employer was aware before the April 2, 2015 remand hearing of Mr. Solis-Gomez's previous testimony about what contacts were made, when they were made, and to whom they were made, the employer did not provide any first-hand witnesses for the telephone hearing in support of the company's position that contact had not been made. The employer again based its evidence on Mr. Payne's hearsay testimony that it was his belief that contact had not been established within three days as required. The employer offered no additional exhibits and made no closing statements; although the employer's presentation was not limited by any time constraints.

In contrast to the hearsay testimony offered by the employer in this matter, Mr. Solis-Gomez testified under oath with specificity that he had personally spoken to an Advance Services representative at the time that he was told the assignment ended about more work and testified about the two occasions within three working days that he had called the employer at the number that the employer provided and testified about leaving a message for the employer on the third call within three days. The claimant's testimony had been earlier collaborated by his exhibits and telephone records, showing that he had made calls to Advance Services on those days. The administrative law judge finds that the employer's assertion that the claimant had previously called for the purposes of appearance only, strains credibility.

Having considered all of the evidence in the record, including the additional cross-examination of the claimant and the employer's rebuttal testimony that took place on April 2, 2015, the administrative law judge concludes that the claimant did comply with the rule that he contact the temporary employer within three working days of the completion of his last assignment to make himself available for additional work. The administrative law judge concludes that Mr. Solis-Gomez left employment on October 3, 2014 when the assignment was completed and the claimant had notified the temporary employment service within three working days of his availability for more work. The claimant's leaving was attributable to the employer. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated October 21, 2014 (reference 01) is affirmed. The claimant left employment with good cause attributable to the employer. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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