

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE J ARCEO

Claimant

APPEAL NO: 14A-UI-10886-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 09/21/14

Claimant: Appellant (2)

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(15) – Temporary Employment

STATEMENT OF THE CASE:

Jose J. Arceo (claimant) appealed a representative's October 14, 2014 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Advance Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 6, 2014. The claimant participated in the hearing. Michael Payne appeared on the employer's behalf. Anna Pottebaum served as interpreter. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment?

FINDINGS OF FACT:

The employer is a temporary staffing agency. After a prior period of employment with the employer, the claimant most recently began an assignment through the employer on September 2, 2014. He worked full time as a laborer at the employer's Lone Tree, Iowa business client through September 23, 2014. The assignment ended that date because the business client deemed the assignment to be completed. The business client informed the employer of the completion of the assignment on that date, and the employer's on-site representative informed the claimant, as part of a group, of the ending of the assignment on the same date. The employer asserted through second-hand testimony that the claimant did not separately contact the employer within three days of the end of the assignment to seek reassignment as required by the employer's policies to avoid being considered to be a voluntary quit. However, the claimant had approached the employer's on-site representative immediately after the group meeting and asked if there was any other work available, and she told him there was not.

REASONING AND CONCLUSIONS OF LAW:

The essential question in this case is whether there was a disqualifying separation from employment. An employee of a temporary employment firm who has been given proper notice of the requirement can be deemed to have voluntarily quit his employment with the employer if he fails to contact the employer within three business days of the ending of the assignment in order to notify the employer of the ending of the assignment and to seek reassignment. Iowa Code § 96.5-1-j. The intent of the statute is to avoid situations where a temporary assignment has ended and the claimant is unemployed, but the employer is unaware that the claimant is not working could have been offered an available new assignment to avoid any liability for unemployment insurance benefits.

Where a temporary employment assignment has ended by the completion of the assignment of and the employer is aware of the ending of that assignment, the employer is already on “notice” that the assignment is ended and the claimant is available for a new assignment; where the claimant knows that the employer is aware of the ending of the assignment, he has good cause for not separately “notifying” the employer. Rule 871 IAC 24.26(15). Further, in this case the claimant testified credibly that he had immediately asked the on-site representative for other work but was told there was none. The employer relies exclusively on the second-hand account from the on-site representative that the claimant did not ask if there was additional work; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the on-site representative may have forgotten the claimant approaching her, whether she is credible, or whether the employer’s witness might have misinterpreted or misunderstood aspects of her report. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant did seek reassignment. The claimant did not have a continuing obligation to seek further assignment after doing so.

Here, the employer was aware that the business client had ended the assignment; it considered the claimant’s assignment to have been completed. The claimant is not required by the statute to remain in regular periodic contact with the employer in order to remain “able and available” for work for purposes of unemployment insurance benefit eligibility. Regardless of whether the claimant continued to seek a new assignment, the separation itself is deemed to be completion of temporary assignment and not a voluntary leaving; a refusal of an offer of a new assignment would be a separate potentially disqualifying issue. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's October 14, 2014 decision (reference 01) is reversed. The claimant's separation was not a voluntary quit but was the completion of a temporary assignment. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css