

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES M FELICETTI**  
Claimant

**APPEAL NO. 09A-UI-14974-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMP ASSOCIATES – MARSHALLTOWN**  
Employer

**OC: 08/30/09**  
**Claimant: Appellant (2)**

Iowa Code Section 96.5(1) – Layoff

**STATEMENT OF THE CASE:**

James Felicetti filed a timely appeal from the September 28, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 5, 2009. Mr. Felicetti participated personally and was represented by Attorney Vincent Naccarato. Mr. Naccarato presented additional testimony through Marty Dolphin of Fisher Controls. Judy Rebik, Manager, represented the employer. Exhibit One was received into evidence.

**ISSUES:**

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

Whether the claimant fits the definition of “temporary employee” under Iowa Code section 96.5(1)(j).

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: James Felicetti has a 35-year business relationship with Fisher Controls in Marshalltown. The relationship has taken different forms over the years and has included direct employment as well as contracted work. Mr. Felicetti resides in Rhode Island. Mr. Felicetti has never resided in Iowa. Mr. Felicetti has expertise in a highly specialized field in which Fisher Controls is an international player. Mr. Felicetti’s particular expertise led Fisher Controls to offer him part-time work in November 2008. Mr. Felicetti was to answer to Marty Dolphin, Director of the Large and Special Rotary Valve department at Fisher Controls.

Once Mr. Felicetti accepted Fisher Control’s offer of employment, Mr. Dolphin referred Mr. Felicetti to Temp Associates in Marshalltown to complete paperwork concerning the employment arrangement. Temp Associates is a temporary employment agency. Mr. Felicetti had no prior contact with Temp Associates and Temp Associates had not placed Mr. Felicetti at Fisher Controls. Temp Associates contracts with Fisher Controls and other clients to provide temporary workers. Temp Associates’ contractual relationship with Fisher Controls also includes situations like Mr. Felicetti’s, where Fisher Controls has directly recruited someone with

special skills or expertise, but desires to outsource employee compensation, taxation matters, and employer liability, including liability for unemployment insurance benefits. Temp Associates was to issue a regular paycheck to Mr. Felicetti based on an electronic timecard Mr. Felicetti would provide to Mr. Dolphin. Mr. Dolphin would then e-mail Temp Associates to authorize payment to Mr. Felicetti. Mr. Felicetti's contact with Temp Associates was limited to the initial contact and further limited contact to arrange for direct deposit of his paycheck. Mr. Felicetti's time in Iowa was limited to a week in November 2008 and a week in December 2008. At all other times, Mr. Felicetti performed his work from his home office in Rhode Island. None of the parties involved had any expectation that Mr. Felicetti would be relocating to Iowa or that Mr. Felicetti would be seeking further work through Temp Associates.

At the time Mr. Dolphin referred Mr. Felicetti to Temp Associates, Temp Associates had Mr. Felicetti execute its boilerplate end-of-assignment Availability Statement. Mr. Felicetti and Temp Associates Manager Judy Rebik signed the document on November 6, 2008. Mr. Felicetti received a copy of the document. The Availability Statement states as follows:

As an employee of Temp Associates I am required to sign Temp Associates work available log after my assignment ends or is temporarily stopped within 3 working days. My failure to do so within the time limit will be considered a voluntary quit and my eligibility for unemployment benefits will be affected. My failure to sign in weekly thereafter will also be grounds for having voluntarily resigned from Temp Associates.

Temp Associates had no expectation that Mr. Felicetti would be stopping in to sign the available log at the end of his work for Fisher Controls or that he would be making weekly contact thereafter for other employment through Temp Associates.

After the initial contact with Temp Associates in November 2008, Mr. Felicetti and Temp Associates had no further contact until August 28, 2009, when Mr. Felicetti contacted Temp Associates to ask which State Temp Associates had reported Mr. Felicetti's wage credits to. All other matters concerning Mr. Felicetti's work for Fisher Controls were addressed between Mr. Felicetti and Fisher Controls.

Mr. Felicetti last performed work for Fisher Controls on June 25, 2009. At that time, Mr. Dolphin notified Mr. Felicetti that the work orders were down due to the economy and directed Mr. Dolphin to take four weeks off until things picked up again. Mr. Dolphin told Mr. Felicetti he would get back to him.

On June 29, 2009, Mr. Dolphin sent his weekly e-mail to Temp Associates concerning Mr. Felicetti's work. Mr. Dolphin directed Temp Associates to reimburse Mr. Felicetti for the attached hours. Mr. Dolphin indicated that he would not be sending any work to Mr. Felicetti - and that Mr. Felicetti would not be turning in any hours - for at least four weeks because orders were down.

At the end of the four-week period, Mr. Dolphin told Mr. Felicetti that work orders were not picking up and that the earliest Fisher Controls might have additional work for Mr. Felicetti would be January 2010. Mr. Felicetti had performed satisfactory work and Mr. Dolphin intended to use Mr. Felicetti again.

After Mr. Dolphin told Mr. Felicetti it would be months before Fisher Controls might have additional work for him, Mr. Felicetti filed for unemployment insurance benefits in Connecticut, where he had previously work. Connecticut authorities directed Mr. Felicetti to file for unemployment insurance benefits in his state of residence, Rhode Island. In late August 2009,

Rhode Island authorities notified Mr. Felicetti that he was not eligible for benefits through that state and directed him to contact Iowa. This prompted Mr. Felicetti's contact with Ms. Rebik at the end of August 2009. On September 1, 2009, Ms. Rebik notified Mr. Felicetti that his wages had been reported to Iowa Workforce Development. Mr. Felicetti then established an Iowa claim for benefits that was deemed effective August 30, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Administrative Code rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The evidence in the record establishes that Mr. Felicetti was laid off from the work at Fisher Controls effective June 25, 2009. Mr. Felicetti at no point indicated an intention or desire to separate from the work he was performing for Fisher Controls. Ordinarily, a layoff would not disqualify a claimant for unemployment insurance benefits because it is not deemed a disqualifying separation. In other words, it is neither a voluntary quit without good cause attributable to the employer nor a discharge for misconduct in connection with the employment. See Iowa Code section 96.5(1) and 96.5(2)(a).

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 administrative law judge concludes that a mechanical application of Iowa Code section 96.5(1)(j) without sufficient regard for the particular facts of this case would be inappropriate and would lead to an unjust outcome in this case. Several aspects of the employment arrangement suggest that the arrangement did not fall within the temporary employment construct the Iowa Legislature intended to address in Iowa Code section 96.5(1)(j).

Temp Associates meets the definition of a temporary employment firm under Iowa Code section 96.5(1)(j)(2).

The harder question is whether Mr. Felicetti meets the definition of a "temporary employee" the Iowa Legislature had in mind when it drafted Iowa Code section 96.5(1)(j)(1). Along with that, is the question of whether the employment arrangement was the sort of temporary employment arrangement the Iowa Legislature intended to address when it enacted Iowa Code section 96.5(1)(j).

The evidence indicates that Mr. Felicetti's work for Fisher Controls did not arise out of a need to supplement the Fisher Controls regular workforce during "absences, seasonal skill or labor market shortages." Instead, Fisher Controls specifically recruited Mr. Felicetti based on expertise he had developed during a career that spanned decades and that brought him into

repeated contact with Fisher Controls over decades. Mr. Felicetti's work at Fisher Controls did not arise out of a special assignment or project. Instead, Mr. Felicetti was recruited to provide ongoing support to the Large and Special Rotary Valve department at Fisher Controls. Fisher Controls continued to use Mr. Felicetti in that capacity until an economy-based decline in work orders eliminated the need for his services and prompted a layoff.

Iowa Code section 96.5(1)(j)(1) indicates that "'temporary employee' means an individual who is employed by a temporary employment firm to provide services to clients..." That particular language suggests that a "temporary employee" is a worker whose skills are at least to a certain extent fungible in nature, such that the temporary employment firm would be able to put the worker to work in a series of work assignments for different clients. Here, Mr. Felicetti's skills were highly specialized and geared toward the specific needs of Fisher Controls. Temp Associates had no expectation whatsoever that it would be assisting Mr. Felicetti with placement in another assignment with a different client.

The administrative law judge concludes that Mr. Felicetti does not meet the definition of "temporary employee" the Iowa Legislature had in mind when it drafted Iowa Code section 96.5(1)(j). Having reached that conclusion, the administrative law judge concludes that the statute pertaining to "temporary employees" cannot be used to recharacterize the layoff as a voluntary quit for the purpose of disqualifying Mr. Felicetti for unemployment insurance benefits.

Even if Mr. Felicetti had met the definition of "temporary employee" the Iowa Legislature had in mind when it drafted Iowa Code section 96.5(1)(j), the evidence provides other reasons why the statute should not be used to disqualify Mr. Felicetti for unemployment insurance benefits. The evidence indicates that Temp Associates knew at the time it had Mr. Felicetti sign the Availability Statement that Mr. Felicetti would not and could not comply with the express requirements set forth in that document without the undue hardship of traveling from Rhode Island to Marshalltown, Iowa. Ms. Rebik testified at the hearing that she at least expected Mr. Felicetti to call within the three-working day timeframe. But Temp Associates never communicated this modified expectation to Mr. Felicetti and certainly did not communicate it in a manner that would satisfy the requirements of Iowa Code section 96.5(1)(j). The evidence indicates that Temp Associates had actual notice of the layoff from Fisher Controls within two working days of Mr. Felicetti's last day of performing work for Fisher Controls. In addition, the evidence indicates that in all practical aspects Temp Associates and Fisher Controls conducted themselves in a manner that led Mr. Felicetti to reasonably conclude that Temp Associates was nothing more than a third-party payroll processing service.

The administrative law judge concludes that Mr. Felicetti was laid off effective June 25, 2009. Mr. Felicetti is eligible for benefits effective August 30, 2009, provided he is otherwise eligible. Temp Associates may be charged for benefits paid to Mr. Felicetti.

**DECISION:**

The Agency representative's September 28, 2009, reference 01, decision is reversed. The claimant was laid off effective June 25, 2009. The claimant is eligible for benefits effective August 30, 2009, provided he is otherwise eligible. Temp Associates may be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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