

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL L HECKETHORN**  
Claimant

**APPEAL NO: 15A-UI-03966-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**  
Employer

**OC: 03/08/15**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Michael L. Heckethorn (claimant) appealed a representative's March 26, 2015 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 May 8, 2015. The claimant participated in the hearing. The employer's representative received the hearing notice and responded by sending a statement to the Appeals Bureau indicating that the employer was not going to participate in the hearing. Based on the evidence, the arguments of the claimant, 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. The claimant took an assignment through the employer which began on or about August 20, 2014. He worked on at the employer's Hedrick, Iowa business client's corn and soybean seed facility, primarily doing bagging, but doing other work as necessary. He worked on an overnight 12-hour shift from 6:00 a.m. to 6:00 p.m. on a rotating day schedule. His last day of work was the shift that began on the evening of March 5 and ended on the morning of March 6, 2015. The assignment ended as of the end of the shift that day, because the business client determined that the claimant's assignment was completed.

The employer's on-site representative had advised the claimant of the approaching end of the assignment on or about March 3. At that time the representative had also reminded the claimant of the requirement that he should seek a new assignment within three business days after the end of the assignment. The claimant had a further discussion with the on-site representative at the end of the last shift, on the morning of March 6. He then specifically asked the representative if there was any further work available, and was specifically told "no." He

asked if his asking the question of the representative at that time would be counted as satisfying the requirement to seek reassignment, and was specifically told “yes.” The claimant later learned that the representative had meant to but had failed to record the claimant’s inquiry about additional work into the employer’s system.

The employer asserted that it was not participating in the hearing “due to judge bias.” No facts were provided to support this allegation.

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

The essential question in this case is whether there was a disqualifying separation from employment. The representative’s decision had concluded that the claimant had “voluntarily quit your employment ... when you failed to notify the temporary employment firm within three working days of the completion of your last work assignment.” 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; Rule 871 IAC 24.26(15). 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.

Here, the evidence establishes that claimant did seek additional work immediately upon the conclusion of the assignment on March 6. The claimant is not required by the statute to continue to maintain contact with the employer after this initial inquiry 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.

If a party believes that an administrative law judge has bias in a case, that party may seek to have the judge recuse himself or herself by filing an affidavit asserting bias and setting forth the basis for that assertion. Iowa Code § 17.17(8); Rule 871 IAC 26.7. The undersigned administrative law judge has no personal knowledge regarding this case; the only information used in reaching the conclusion is that information which has been presented during the course of the hearing, in this case, through the first-hand testimony of the claimant. The administrative law judge has no personal interest regarding either the claimant or the employer that could be affected by the outcome of this case, and has no personal sympathy toward or animus against either party. Rather, the administrative law judge only applies the applicable law and burden of proof to weigh the sufficiency of the evidence and to reach an appropriate legal conclusion. The fact that the administrative law judge may not give much weight to second-hand information provided by the employer compared to first-hand information provided by a claimant does not amount to bias, but is proper application of the legal standards. The employer has not provided any basis for its assertion of bias, and has not established that there is either actual bias or a bona fide appearance of bias. The employer’s assertion is without merit.

### **DECISION:**

The representative’s March 26, 2015 decision (reference 01) is reversed. The claimant’s separation was not a voluntary quit but was the completion of a temporary assignment, perhaps

unsuccessfully, but not due to misconduct. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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