

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MISTY D KIRCHNER

Claimant

APPEAL NO: 15A-UI-02909-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC

Employer

OC: 02/01/15

Claimant: Appellant (2-R)

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

STATEMENT OF THE CASE:

Misty D. Kirchner (claimant) appealed a representative's February 24, 2015 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Team Staffing Solutions, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 4, 2015. The claimant participated in the hearing. Sarah Fiedler appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. 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. The claimant's first and only assignment through the employer began on December 2, 2013. She worked full time as a production worker at the employer's Burlington, Iowa business client. Her last day of work was January 29, 2015.

The claimant was off work on a medical leave from February 2 through February 5. On February 6 the employer's on-site representative contacted the claimant and advised her that the assignment was restructuring, so that her assignment was ended for at least the time being. He advised her that she could be off work "until she felt better and was ready to come back to work," at which point she was to contact him. She attempted to contact him on February 13, but he did not return her calls. The employer asserted that the claimant was deemed to have voluntarily quit because she 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.

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 she 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, unless there is “good cause” for delaying or failing to do so. 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.

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, she has good cause for not separately “notifying” the employer. Here, the claimant also reasonably relied upon the assertion by the employer’s on-site representative, which is further good cause for not otherwise separately contacting the employer within three days of February 6.

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.

An issue as to whether the claimant was sufficiently able and available for work for either the benefit week ending February 7 or February 14, 2015 arose during the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. Rule 871 IAC 26.14(5).

DECISION:

The representative’s February 24, 2015 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 she is otherwise eligible. The matter is **REMANDED** to the Benefits Bureau for investigation and determination of the able and available issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs