

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINE F RINEHART
Claimant

APPEAL NO: 09A-UI-01667-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES - MARSHALLTOWN
Employer

OC: 12/21/08 R: 03
Claimant: Respondent (1/R)

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(19) – Temporary Employment
Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Temp Associates (employer) appealed a representative's February 3, 2009 decision (reference 02) that concluded Christine F. Rinehart (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 24, 2009. The claimant participated in the hearing. Nancy Mullaney appeared on the employer's behalf. 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 began on October 29, 2007. She worked full time as a production worker on the second shift at the employer's Montezuma, Iowa business client through December 21, 2007. 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 December 22, 2007. The employer then informed the claimant of the ending of the assignment; the claimant inquired whether additional work was available, but was told that due to the holidays there was currently no further work was available, and that the claimant should check back the following Friday, December 28. The claimant came in for her paycheck on December 28 and did again inquire as to whether there was additional work, but again was told there was not. She did not subsequently regularly check once a week to seek reassignment.

As a result of this separation from the assignment, the claimant established an unemployment insurance benefit year effective December 23, 2007. A notice of claim was sent to the employer

on December 26. The employer responded on December 27 to note that it was not protesting the claimant's eligibility on the separation.

The claimant continued to make weekly claims throughout the claim year, and was making weekly claims during the period of September through November 2008. During the hearing the claimant acknowledged that she had been employed during that period at Castle Ridge Winery. She did not report those wages on her weekly claims.

When the claimant's prior claim year expired December 20, 2008, she established a second benefit year effective December 21, 2008. A new notice of claim was sent to the employer, and the claimant filed its protest because the claimant had not maintained contact with it after January 2008.

REASONING AND CONCLUSIONS OF LAW:

As a preliminary matter, the administrative law judge notes that the separation issue here should in fact not even have been reviewed by the Claims Section, as there was only one separation from employment, and by law, as the employer had the opportunity to challenge that separation in a prior claim year and did not, the de facto determination that the separation was not disqualifying has become final and should not have been subject to review in the subsequent benefit year. Iowa Code § 96.6-2; Beardslee v. Iowa Department of Job Service, 276 N.W.2d 373 (Iowa 1979); see also In re Appeal of Elliott, 319 N.W.2d 244, 247 (Iowa 1982); Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983); Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979) and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990); 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1).

However, as the issue of timeliness was not apparent until the hearing was underway and the outcome on the merits does not yield a contrary result, the administrative law judge will proceed to make a decision on the substance of the separation. The essential question in this case is then 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. 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 has discussed the ending of the assignment as well as the possibility or current lack of possibility of additional assignments, the claimant has substantially complied with the requirement. 871 IAC 24.26(19). The claimant is not required by the statute or rule 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.

Some evidence was provided that the claimant was receiving income that should have been reported to reduce her benefits. This is a matter not included on the notice of hearing, and the administrative law judge is without jurisdiction to make a ruling on the issue. This matter is remanded to Quality Control to determine if the claimant was receiving wages that she failed to report.

DECISION:

The representative's February 3, 2009 decision (reference 02) is affirmed. 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 Quality Control Section for investigation and determination of the unreported wage issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs