

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAYE JACKSON

Claimant

APPEAL NO: 12A-UI-14556-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ANNA ENTERPRISES
STAFFING SOLUTIONS**

Employer

OC: 11/04/12

Claimant: Respondent (4/R)

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(15) – Temporary Employment
Section 96.5-3-a – Work Refusal
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Anna Enterprises / Staffing Solutions (employer) appealed a representative's December 5, 2012 decision (reference 01) that concluded Gaye Jackson (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 convened on January 15, 2013, and was reconvened and concluded on February 8, 2013. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Bill Van Sloun 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 employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was there a disqualifying separation from employment? Is the claimant disqualified due to refusing an offer of suitable work? Was the claimant able and available for work?

FINDINGS OF FACT:

The employer is a temporary staffing agency. The claimant began taking assignments through the employer on March 22, 2012. He worked an assignment from that date through October 23, 2012, and then checked in for reassignment on October 24. His final assignment began on October 30 and ended on November 2, 2012. The assignment ended that date because the business client deemed the assignment to be completed. The claimant then again checked in for reassignment on November 2, 2012; at that time no other work was available.

On November 13 the employer offered the claimant a position with another business client that would have provided 36 hours of work per week at a rate of \$10.25, for a weekly gross wage of \$369.00, working from 6:00 a.m. to 6:30 p.m. on Friday, Saturday, and Sunday. The position

was to start at 6:00 a.m. on November 16. The claimant initially accepted the offer of work. However, he was a no-call/no-show for the position. When the claimant contacted the employer on November 21 he had no explanation as to why he had not reported for the assignment, but only indicated that he had not called because he had lost his phone.

The claimant established an unemployment insurance benefit year effective November 4, 2012. He made weekly continued claims for benefits for the weeks ending November 10, November 17, and November 24. The claimant's average weekly wage for the high quarter of the claimant's base period, upon which his benefits were calculated, was \$723.35.

REASONING AND CONCLUSIONS OF LAW:

The first 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. Here the most recent assignment worked by the claimant ended on November 2 and the claimant did properly seek reassignment after the ending of that assignment.

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. As to the separation, benefits are allowed, if the claimant is otherwise eligible.

However, a refusal of an offer of a new assignment would be a separate potentially disqualifying issue. Even though the claimant initially accepted the offer of the new assignment to begin November 16, his failure to follow through with reporting for that assignment is tantamount to a refusal.

Iowa Code § 96.5-3-a provides in pertinent part:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals,

the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

- (1) One hundred percent, if the work is offered during the first five weeks of unemployment.
(Emphasis added.)

The gross weekly wage for the position offered by the employer to begin November 16 was not equal or greater than \$723.25. While the claimant had in the past accepted and worked assignments which were below that average weekly wage, by definition, the position refused on November 16 was not "suitable" so that the refusal cannot result in a disqualification requiring the claimant to earn ten times his weekly benefit amount to requalify for benefits.

The claimant's refusal of the work to begin November 16 by failing to report for the assignment raises a further question as to whether he was actually able and available for work that week. With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. The claimant has not provided any information which would explain his failure to report for an assignment which he had previously accepted and which would refute the inference that he did not report because he was not able and available to work the assignment. He has not demonstrated that he was sufficiently able and available for work for the benefit week ending November 17. Benefits are denied for that week.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. Iowa Code § 96.3-7. In this case, the claimant has received benefits for the week ending November 17 but was ineligible for those benefits. The matter of determining the amount of the overpayment is remanded to the Claims Section.

DECISION:

The representative's December 5, 2012 decision (reference 01) is modified in favor of the employer. The claimant's separation was not a voluntary quit but was the completion of a temporary assignment. The claimant did not subsequently refuse a suitable offer of work.

Benefits are allowed, if the claimant is otherwise eligible. However, the claimant was not able and available for work the benefit week ending November 17, 2012. **The matter is remanded to the Claims Section for investigation and determination of the overpayment issue for the benefit week ending November 17, 2012.**

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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