

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA G AYON
Claimant

APPEAL NO: 14A-UI-03638-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 01/05/14

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Maria G. Ayon (claimant) appealed a representative's March 27, 2014 decision (reference 02) that concluded she 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 9, 2014. The claimant participated in the hearing. Michael Payne appeared on the employer's behalf. Anna Pottebaum served as interpreter. 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. After a prior period of employment with the employer, the claimant most recently (prior to reopening her claim effective March 2, 2014) began an assignment on or about January 4, 2014. She worked full time doing packaging at the employer's Sioux City, Iowa business client. Her last day of work was February 27, 2014. 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 February 28, 2014. The employer asserted that the claimant 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. However, on February 27, after being released from the assignment at about 12:30 p.m., the claimant physically went in person to the employer's Sioux City office and told the representative at that office that the assignment was ended and that she wished to be assigned a new job. The representative told the claimant that there was no further work available at that time.

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 her 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. 871 IAC 24.26(15).

Here, the employer was aware that the business client had ended the assignment; it considered the claimant's assignment to have been completed. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the claimant had in fact immediately sought reassignment with the employer. 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.

DECISION:

The representative's March 27, 2014 decision (reference 02) 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

Id/