**IOWA WORKFORCE DEVELOPMENT**
**Unemployment Insurance Appeals Section**
**1000 East Grand—Des Moines, Iowa 50319**
**DECISION OF THE ADMINISTRATIVE LAW JUDGE**
68-0157 (7-97) – 3091078 - EI

**ADBOULAYE DOUMBOUYA**
**APT 2**
**4691 TAMA ST**
**MARION IA 52302**

**CAMBRIDGE TEMPOSITIONS INC**
**610 – 32ND AVENUE SW**
**CEDAR RAPIDS IA 52404-3910**

**Appeal Number: 05A-UI-03894-DT**
**OC: 02/27/05 R: 03**
**Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(19) – Temporary Employment
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

Adboulaye Doumbouya (claimant) appealed a representative's April 8, 2005 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Cambridge Tempositions, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 4, 2005. The claimant participated in the hearing. The employer received the hearing notice and responded by calling the Appeals Section on April 20, 2005. The employer indicated that Tracy Carkhuff would be available at the scheduled time for the hearing at telephone number 319-362-9555. However, when the administrative law judge called that

number at the scheduled time for the hearing, Ms. Carkhuff was not available. The employer's office manager, Brad Smith, attempted to participate in the hearing in lieu of Ms. Carkhuff, but he had no information and disconnected from the call during the course of the hearing. Therefore, the employer did not participate in the hearing. The record was closed at 2:30 p.m. At 3:26 p.m., a different witness called the Appeals Section on behalf of the employer and requested that the record be reopened. 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:

Should the hearing record be reopened? Was there a disqualifying separation from employment?

FINDINGS OF FACT:

The employer has several offices in eastern Iowa; however, all mail regarding unemployment insurance benefits is intentionally sent to the main office in Cedar Rapids, Iowa. The employer received the hearing notice prior to the May 4, 2005 hearing. The instructions inform the parties that they are to be available at the scheduled day and time for the hearing, and if the party is not available, the administrative law judge may proceed and make a decision on other available information. The designated employer's representative was not available at the number provided at the time for the hearing. In fact, the employer had designated the wrong representative to participate in the hearing. The claimant had taken assignments out of both the employer's Cedar Rapids and Iowa City offices. When the hearing notice arrived at the main office in Cedar Rapids, the employer's staff did not investigate the matter sufficiently so as to determine that the claimant's most recent assignment had been out of the Iowa City office. Rather, the hearing was set up with a representative from the Cedar Rapids office, again who was then unavailable. The employer did not recontact the Appeals Section to seek participation by the Iowa City representative in the hearing until almost an hour and a half after the scheduled start time for the hearing.

The employer is a temporary staffing agency. The claimant began taking assignments through the employer on January 10, 2000. His most recent assignment began in October 2004. He worked full time as a worker in the laundry at the University of Iowa Hospitals. He normally worked from 7:00 a.m. to 3:00 p.m. Monday through Friday. His last day on the assignment was December 24, 2004.

From December 15 through December 23 work at the laundry was slow, and the claimant's laundry supervisor would send him and the other temporary employees home early each day, until finally on December 24, 2004, the supervisor sent the claimant home immediately upon his arrival. She explained that work was slow because many of the doctors were on vacation. She told the claimant he would not be needed the next week, and that he should check back with the employer after the first of the year to see when he should return.

Immediately upon leaving the laundry on December 24, the claimant went directly to the employer's office and talked to a staff person. He explained that the work at the laundry was ended until at least the first of the year and asked if there was some other assignment he could have until he was needed again at the laundry. The employer's staff person told him that since it was the holidays, there were no other assignments available, and that he should call the office on January 3, 2005 to check on the status of the laundry assignment.

On January 3, 2005 the claimant called the employer's office and the staff person told him that work at the laundry was still slow, so he would not be needed that week. She told him to call back the following Monday. The following Monday, January 10, 2005, the claimant called the employer's office again. The staff person told him that she had attempted to contact him during the last week to go back to the laundry, but since the claimant had not been available when she called, he had been replaced on the assignment.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the hearing record should be reopened.

871 IAC 26.8(3), (4) and (5) provide:

> Withdrawals and postponements.
>
> (3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.
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> (4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.
>
> (5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

Although the employer intended to participate in the hearing, the employer failed have the proper representative available at the specified time for the hearing. The rules specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7). The employer's error in realizing until after the time for the hearing that the wrong representative had been arraigned for the hearing is a business decision for which the employer must bear the consequences. The employer did not establish good cause to reopen the hearing. Therefore, the employer's request to reopen the hearing is denied.

The essential question in this case is whether there was a disqualifying separation from employment.

Iowa Code section 96.5-1-j provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department, But the individual shall not be disqualified if the department finds that:
>
> j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.
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> To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

871 IAC 24.26(19) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
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> (19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

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 and the employer is aware of the end of that assignment, the employer is already on notice that the assignment is ended and the claimant is available for a new assignment.

Here, the employer was aware that the business client had at least temporarily ended the assignment. Even if the claimant had not reported for a new assignment, which he actually did, the separation is deemed to be completion of temporary assignment and not a voluntary leaving. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's April 8, 2005 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 he is otherwise eligible.

ld/pjs