

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIEL W MCKITTRICK**  
Claimant

**APPEAL NO: 09A-UI-17766-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**R J PERSONNEL INC  
TEMP ASSOCIATES**  
Employer

**OC: 12/21/08**

**Claimant: Respondent (2/R)**

Section 96.5-1-j – Temporary Employment  
871 IAC 24.26(19) – Temporary Employment

**STATEMENT OF THE CASE:**

R J Personnel, Inc. / Temp Associates (employer) appealed a representative's November 20, 2009 decision (reference 02) that concluded Daniel W. McKittrick (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 January 6, 2010. 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. Holly Jacobi appeared on the employer's behalf and presented testimony from one other witness, Kevin Jensen. 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.

**ISSUE:**

Was there a disqualifying separation from employment?

**FINDINGS OF FACT:**

The employer is a temporary staffing agency. The claimant began taking assignments through the employer on July 14, 2009. He worked full time as a laborer at the employer's manufacturing business client through October 20, 2009. On that date the business client informed the claimant that his last day of work on the assignment would be October 24. The claimant was a no-call/no-show for the final days of the assignment. The business client informed the employer on October 26, 2009 that the assignment had ended and that the claimant's last day of work on the assignment had been October 20; the employer had not previously been aware that the assignment would be ending or that the claimant had not been at work since October 20. The claimant did not separately contact the employer within three days of the ending of the assignment; he did not contact the employer until October 29. The claimant had signed a statement acknowledging that he needed to contact the employer within three days of the ending of an assignment to avoid being considered to be a voluntary quit. The

claimant was subsequently rehired and worked in a new assignment, which is not the subject of this decision.

The claimant established an unemployment insurance benefit year effective December 21, 2008. He reopened the claim by filing an additional claim effective October 25, 2009. The claimant has received unemployment insurance benefits after the October 20, 2009 separation.

**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 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.

The facts establish the claimant was on a temporary assignment from July 14 through October 20, 2009. The facts also show that when the claimant began working for the employer, he was given a copy of the policy that informed him he must contact the employer within three days of completing an assignment.

Based on the facts presented during the hearing, the claimant completed a job assignment but did not contact the employer about another job. The employer possibly could have assigned the claimant to another job. For unemployment insurance purposes, the claimant voluntarily quit his employment with the employer, a temporary staffing firm. This does not preclude his being rehired and placed on a subsequent assignment. Therefore, as of October 20, 2009, the claimant is not qualified to receive benefits.

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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's November 20, 2009 decision (reference 02) is reversed. The claimant voluntarily quit his employment by failing to notify the employer he had completed a job. The claimant is disqualified from receiving unemployment insurance benefits as of October 20, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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