

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GWENDOLYN S MURRAY

Claimant

APPEAL NO: 09O-UI-15249-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC

Employer

OC: 06/14/09

Claimant: Appellant (2/R)

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

STATEMENT OF THE CASE:

Gwendolyn S. Murray (claimant) appealed a representative's July 24, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Remedy Intelligent Staffing, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 10, 2009. The claimant participated in the hearing. Sadie Garland 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 began taking assignments through the employer on November 17, 2007. Her final assignment began on May 27, 2009. She was working full time working in packaging at the employer's business client through May 28, 2009. The client typically posted the names on a board of the temporary employees it wished to return the next day. On May 28 the claimant's name was not on the board for May 29; she understood she was then to call the employer's office to learn if she was to return to the assignment the following week. The employer asserted that on May 29 one of its representatives called the claimant and left a message that she was to return to the assignment on June 1; the claimant denied receiving this message. On June 1 the claimant called the employer to inquire about work; she was not told she could go back to the assignment at that point, and was told that there was not currently any other work available.

The employer asserted that it contacted the claimant on June 3 to offer an assignment which the employer asserts the claimant declined. Likewise, the employer asserts that the claimant effectively declined an offer of work on July 27 and on August 18. Some evidence was presented suggesting that during at least a portion of the time between June 1 and at least

August 18 the claimant was not able and available for work due to being out of town or being incarcerated.

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(19).

Here, the preponderance of the evidence indicates that the claimant did contact the employer within three business days of her last day worked on the assignment and was told no further work was available to her. 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.

An issue as to whether the claimant refused suitable offers of work and if so if for good cause, as well as an issue as to whether the claimant is and has been able and available for work, arose during the hearing. These issues were not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on those issues. 871 IAC 26.14(5).

DECISION:

The representative's July 24, 2009 decision (reference 01) 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.

The matter is remanded to the Claims Section for investigation and determination of the refusal and able and available issues.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css