

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HECTOR M VEGA

Claimant

APPEAL NO. 10A-UI-04501-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

**Original Claim: 12/06/09
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

Advance Services, Inc. (employer) appealed a representative's March 16, 2010 decision (reference 02) that concluded Hector M. Vega (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 June 10, 2010. This appeal was consolidated for hearing with one related appeal regarding a related claimant, Elida S. Vega, in appeal 10A-UI-04503-DT. Elida Vega received the hearing notice and responded by calling the Appeals Section on May 6, 2010, the date of the originally scheduled hearing. She indicated that the claimants would be available at the scheduled time for the hearing at a specified telephone number but that an interpreter was needed. As it was only a few minutes prior to the hearing time when she called, an interpreter could not be immediately procured, so the hearing was rescheduled for June 10 so that an interpreter could be scheduled. However, when the administrative law judge called the claimants' number at the scheduled time for the hearing, neither of them was available; therefore, the claimants did not participate in the hearing. Scott McKenzie 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.

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 or about June 19, 2006. His final assignment began on January 28, 2010. He worked full time as a general laborer at the employer's Slater, Iowa, business client through February 19, 2010. The assignment ended that date because the business client deemed the assignment to be completed. The employer's office manager informed the claimant of the completion of the assignment on that date. The employer asserts that the claimant did not separately contact the employer within three days of the end of the assignment as required by

the employer's policies to avoid being considered to be a voluntary quit. The employer's representative could not establish what conversation may have occurred between the claimant and the employer's office manager as to whether there was any other work available through the employer.

In prior years, the employer had simply recontacted the claimant for periodic assignments at this same business client on an as-needed basis, usually four or five assignments per year, of about two to three months in duration. On February 28, 2009, the employer had obtained a signature from the claimant on a document including a number of the employer's policies and procedures, including a variety of items other than the provisions for the ending of the assignment. One of the provisions of that document indicated that the claimant agreed to contact the employer within three days of the ending of an assignment to seek a new assignment in order to avoid being treated as a voluntary quit.

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.

First, there is here a question as to whether the claimant was "properly notified" of the requirement. The statute specifies that the document must provide "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 . . ." The document provided by the employer, which includes a variety of items and is not clearly separate from a contract of employment, does not satisfy this requirement.

Further, where a temporary employment assignment has ended by the completion of the assignment of and the employer is aware of the ending of that assignment, the employer is already on "notice" that the assignment is ended and the claimant is available for a new assignment; where the claimant knows that the employer is aware of the ending of the assignment, he has good cause for not separately "notifying" the employer. 871 IAC 24.26(19). The employer has not established that at the time the employer's office manager informed the claimant of the ending of the assignment there was any discussion indicating that other work was immediately available elsewhere. The claimant reasonably relied on the prior business practice established between the parties in which he would be contacted by the employer at such time as other work became available.

The employer was aware that the business client had ended the assignment; it considered the claimant's assignment to have been completed. 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 16, 2010 decision (reference 02) is affirmed. 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw