

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY A FRAZEE
Claimant

APPEAL NO: 15A-UI-08105-LDT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 01/04/15

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Terry A. Frazee (claimant) appealed a representative's July 9, 2015 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Advance Services, Inc. (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on August 20, 2015. This appeal was consolidated for hearing with one related appeal, 15A-UI-08106-LDT. The employer's representative received the hearing notice and responded by sending a statement to the Appeals Bureau indicating that the employer was not going to participate in the hearing. On August 15, 2015 the claimant sent a statement to the Appeals Bureau indicating that he would be working at the scheduled time for the hearing on August 20, and requested that the administrative law judge make a decision based upon his written statement. Based on a review of the available information including the claimant's written statement 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 worked an assignment at the employer's business client through December 5, 2014. The assignment ended that date because the business client deemed the assignment to be completed as they did not have enough work for the claimant. The claimant contacted the employer on December 8, 2014, within three days of the end of the assignment, in order to see if they had a job for him, but they did not.

The employer asserted that it was not participating in the hearing "due to judge bias." No facts were provided to support this allegation.

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; Rule 871 IAC 24.26(15). 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.

Here, the claimant did seek reassignment within three business days after the claimant's assignment was 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.

If a party believes that an administrative law judge has bias in a case, that party may seek to have the judge recuse himself or herself by filing an affidavit asserting bias and setting forth the basis for that assertion. Iowa Code § 17.17(8); Rule 871 IAC 26.7. The undersigned administrative law judge has no personal knowledge regarding this case; the only information used in reaching the conclusion is that information available in the administrative file. The administrative law judge has no personal interest regarding either the claimant or the employer that could be affected by the outcome of this case, and has no personal sympathy toward or animus against either party. Rather, the administrative law judge only applies the applicable law and burden of proof to weigh the sufficiency of the evidence and to reach an appropriate legal conclusion. The fact that the administrative law judge may not give much weight to second-hand information that might be provided by the employer compared to first-hand information that might be provided by a claimant does not amount to bias, but is proper application of the legal standards. The employer has not provided any basis for its assertion of bias, and has not established that there is either actual bias or a bona fide appearance of bias. The employer's assertion is without merit.

DECISION:

The representative's July 9, 2015 decision (reference 04) 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs