

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRUNO N ZAVALA-NACIENCENO
Claimant

APPEAL NO: 12A-UI-01656-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 01/01/12

Claimant: Respondent (1/R)

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 February 7, 2012 decision (reference 01) that concluded Bruno N. Zavala-Nacienceno (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 March 7, 2012. The claimant participated in the hearing and presented testimony from one other witness, Janira Zavala. Holly Carter appeared on the employer's behalf and presented testimony from one other witness, Chelsea Osenbaugh. Zorana Vojnocić served as interpreter. 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 in September 2008. His most recent assignment prior to the hearing began on May 2, 2011. He worked full time as a painter at the employer's Belmond, Iowa business client. His last day of work on the assignment was June 17, 2011. The business client informed the claimant that the assignment was ended as of that date because the business client deemed the assignment to be completed. The business client informed the employer that the claimant had decided to leave the assignment because he had found other work. However, that report to the employer was incorrect, it was not the claimant's choice to end the assignment at that time. He did not have any other work arranged until he started working for another company on a corn project later in July. The claimant's daughter had been working on the same assignment through the employer, and she heard the business client's manager tell the claimant that his work on the assignment was completed. The claimant, through his daughter, contacted the employer on June 17 to report that the assignment had ended and that he wished to be placed in a new assignment. The employer responded that there was currently no other work

available, and that the employer would call the claimant if some additional work would become available.

The claimant established an unemployment insurance benefit year effective January 1, 2012. Some evidence was presented indicating that the claimant was hospitalized and unable to work due to diabetes for a period of time between January and February 2012.

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. 871 IAC 24.26(15).

Here, the employer was aware that the business client had ended the assignment; this was because the claimant's assignment had been completed. He did contact the employer upon completing the assignment and did seek reassignment. 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 February 7, 2012 decision (reference 01) 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/pjs