

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHNNY T DENNY
Claimant

APPEAL NO. 07A-UI-08295-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

**OC: 03/18/07 R: 04
Claimant: Respondent (1)**

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(19) – Temporary Employment
Section 96.7-2-a(2) – Charges Against Employer’s Account

STATEMENT OF THE CASE:

Temp Associates (employer) appealed a representative’s August 28, 2007 decision (reference 03) that concluded Johnny T. Denny (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 September 13, 2007. The claimant participated in the hearing. Jan Windsor 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.

ISSUES:

Was there a disqualifying separation from employment?

Is the employer’s account subject to charge?

FINDINGS OF FACT:

The employer is a temporary staffing agency. The claimant began taking assignments through the employer on April 23, 2007. His final assignment began on May 9, 2007. He worked full time as a laborer at the employer’s business client through July 17, 2007. The assignment ended that date because the business client deemed the assignment to be completed and that it had no further work for the claimant. The business client told the claimant on July 18 that he “might be done,” and on July 19 and July 20 the business client did not respond to the claimant’s phone messages inquiring as to whether there was any additional work for him.

On or about June 19, the claimant went into the employer’s office to pick up his paycheck for the prior week. He advised the receptionist that he was not sure, but he believed he might be done working on the assignment for that business client. The receptionist did not pass that information on to other staff or give the claimant additional instructions as to what he should do. On or about July 26, the claimant went to the employer’s office to pick up his check for his work

through July 17, but there was no check waiting for him as the business client had been delinquent in turning in the claimant's time records; Ms. Windsor, the office manager, learned at that time that the claimant had not worked on the assignment since July 17. The claimant had not separately signed in on an availability sheet in the employer's office within three days of July 17 to seek reassignment as required by the employer's policies to avoid being considered to be a voluntary quit.

The claimant established a claim for unemployment insurance benefits effective March 18, 2007. He filed an additional claim effective July 29, 2007. On August 16, he advised the employer that he would only be available for part-time work due to attending school. In a separate representative's decision issued August 28, 2007 (reference 05), the claimant was granted Department Approved Training (DAT) status effective May 13, 2007 through at least March 15, 2008.

REASONING AND CONCLUSIONS OF LAW:

The essential question in this case is whether there was a disqualifying separation from employment.

Iowa Code § 96.5-1-j provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department, but the individual shall not be disqualified if the department finds that:

j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides 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 and a copy of the signed document shall be provided to the temporary employee.

871 IAC 24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code § 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code § 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

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. Where a temporary employment assignment has ended and the employer is aware of the end 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. The statute does not require that the notification take the form of "signing in" on either a one-time or weekly basis.

Here, the employer was aware or should have been aware that the business client had ended the assignment; it considered the claimant's assignment to have been completed. The claimant substantially complied with the notice requirement when he advised the receptionist that the assignment was likely done; her failure to pass the information on to other persons in the office or to direct the claimant that he should then sign in on the availability log is not to be held against the claimant in his good faith attempt to communicate the information to the employer. Regardless of whether the claimant reported for a new assignment, the separation 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.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began October 1, 2005 and ended September 30, 2006. The employer did not employ the claimant during this time and, therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

Further, so long as the claimant remains on DAT status, he is not required to remain available for full time work, but also, the employer's account will not be subject to charge. Iowa Code § 96.4-6-a, b.

DECISION:

The representative's August 28, 2007 decision (reference 03) 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. The employer's account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css