

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSALIO BUENROSTRO
Claimant

APPEAL NO. 11A-UI-07419-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 05/01/11

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Rosalio Buenrostro (claimant) appealed a representative's June 2, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Advance Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 18, 2011. The claimant participated in the hearing. Holly Carter appeared on the employer's behalf. Anna Cox served as interpreter. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, 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 March 17, 2010. His final assignment began on November 9, 2010. He worked full time as a general laborer at the employer's North Sioux City, South Dakota, business client through April 29, 2010. The assignment ended that date because the business client deemed the assignment to be completed. The business client informed the claimant of the completion of the assignment about a day before on April 29. The employer was not directly informed by the business client; when the claimant did not have a time card for the week ending May 6, the employer confirmed with the business client on May 9 that the assignment had ended.

The employer asserted that the claimant did not contact the employer within three days of the end of the assignment to seek reassignment as required by the employer's policies to avoid being considered to be a voluntary quit. However, the claimant had come into the employer's offices on May 3 to speak to the employer's Spanish speaking coordinator and to seek

reassignment. When he arrived, he was advised that this coordinator was not in the office; the claimant was unable to successfully communicate with the other personnel in the office to convey that the assignment had ended and that he was interested in additional work. He went back into the offices on May 6 to pick up his paycheck; he believed he had successfully informed the employer that his assignment was completed and that he was interested in additional work.

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; 871 IAC 24.26(15). The intent of the provision 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 had, to the best of his ability, made a bona fide attempt within three business days of the ending of the assignment to communicate to the employer that the assignment was ended and that he was interested in additional work. 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 June 2, 2011 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 he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw