

arguments of the employer, 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 November 23, 2004. His first assignment was a one-day assignment on November 23, 2004; both the employer and the claimant knew that the assignment was for only one day, and the claimant did make himself available after that date for new assignments. His second assignment began on December 6, 2004 and ended on December 23, 2004; he quit that position for a full time permanent position.

The claimant resumed taking assignments on August 26, 2005. He worked full time as a team member at the employer's business client through August 29, 2005. The assignment ended that date because the business client deemed the assignment to be completed. The claimant informed the employer on August 29 of the end of the assignment and indicated that he was available for reassignment. He did not subsequently contact the employer once a week to seek reassignment as required by the employer's policies to avoid being considered to be a voluntary quit; in fact, he informed the employer on September 9, 2005 that he was moving to another locality for an unspecified period of time.

The claimant established an unemployment insurance benefit year effective September 4, 2005.

REASONING AND CONCLUSIONS OF LAW:

The essential question in this case is whether there was a disqualifying separation from employment, and there are two separations that must be considered.

Iowa Code section 96.5-1-a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

With regard to the separation on December 23, 2004, the claimant did voluntarily quit in order to accept other employment. The claimant is not disqualified from receiving benefits as a result of this quit in the event of a future separation from employment, but the employer's account will not

be charged for benefits based on wages with the employer for work through December 23, 2004.

Iowa Code section 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 section 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 section 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 and could have been offered an available new assignment to avoid any liability for unemployment insurance benefits. Here, the claimant did notify the employer that the business client had

ended the assignment and that he was now available for a new assignment. The statute does not require the claimant to continue to make himself available to the employer for a new assignment after the initial requirement that he advise the employer of his availability within three days of the end of the 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. Benefits are allowed, if the claimant is otherwise eligible.

The final issue is whether the employer's account is subject to charge. As noted above, the employer is not subject to charge for benefits based on his pre-December 23, 2004 wages. As to his wages for August 26 through August 29, 2005, 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 April 1, 2004 and ended March 31, 2005. The employer's August 2005 employment of the claimant did not fall during this time, and therefore the employer's account is not currently chargeable for benefits paid to the claimant.

**DECISION:**

The representative's October 11, 2005 decision (reference 04) is modified in favor of the employer. The claimant voluntarily left his employment on December 23, 2004, but the quit was not disqualifying. The claimant is eligible for unemployment insurance benefits after that separation, provided he was otherwise eligible. The employer's account will not be charged for benefits based on the pre-December 23 wages. The claimant's August 29, 2005 separation was not a voluntary quit but was the completion of a temporary assignment. The claimant is qualified to receive unemployment insurance benefits after that separation, if he is otherwise eligible. The employer's account is not subject to charge in the current benefit year based on the August 2005 wages.

ld/pjs