

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SERGIO ASCENIO
Claimant

APPEAL NO. 11A-UI-11491-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**R J PERSONNEL INC
TEMP ASSOCIATES**
Employer

OC: 07/17/11
Claimant: Appellant (1)

Section 96.5-1-j – Quit From Temporary Employment
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Sergio Ascenio filed an appeal from an unemployment insurance decision dated August 17, 2011, reference 03, that denied unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held September 27, 2011 with Mr. Ascenio participating and presenting additional testimony by Jimmy Aguirre. Patricia Vargas served as the interpreter. Account Manager Holly Jacobi participated for the employer, Temp Associates. Employer Exhibits One and Two and Exhibit D-1 were admitted into evidence.

ISSUES:

Has the claimant filed a timely appeal?
Was the separation a disqualifying event?

FINDINGS OF FACT:

Sergio Ascenio worked temporary assignments for Temp Associates. He finished an assignment on January 23, 2011. Mr. Ascenio contacted Mariano Rodriguez concerning re-assignment on February 4, 2011. He could not have contacted Mr. Rodriguez sooner because Mr. Rodriguez was on vacation. When Mr. Ascenio was first hired, Mr. Rodriguez explained to him in Spanish that he was required to contact the company to seek re-assignment within three working days after the end of each assignment. He received a copy of that notification in English at that time. The decision from which Mr. Ascenio has appealed states that it would become final unless an appeal was postmarked by August 20, 2011 or received by the agency by that date. He filed his appeal on August 31, 2011. He filed as soon as the fact-finding decision was translated into Spanish for him.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the administrative law judge has jurisdiction to rule on the merits of this case. He concludes that he does. Federal law requires the agency to take into account an individual's lack of English skills when determining the timeliness of any response to a federally,

funded program. The evidence persuades the administrative law judge that Mr. Ascenio does not read English well and that he filed his appeal promptly after learning of the impact of the decision.

The remaining question is whether the separation from employment was a disqualifying event. It was.

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.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

The evidence in the record persuades the administrative law judge that the employer met its obligation under Iowa Code § 96.5-1-j to notify Mr. Ascenio of his obligation to seek re-assignment within three working days. While the document provided to him was in English, not Spanish, he received oral instructions in his native language. In his testimony, he stated he had spoken to Mr. Rodriguez but did not recall the date. The employer's exhibit and the testimony of its witness establish that the contact was made more than three working days after the end of the last assignment. Therefore, benefits must be withheld.

DECISION:

The unemployment insurance decision dated August 17, 2011, reference 03, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs