

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSH L RATLIFF**

Claimant

**APPEAL NO: 14A-UI-09880-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**

Employer

**OC: 08/24/14**

**Claimant: Respondent (2)**

Section 96.5-1-j – Temporary Employment  
871 IAC 24.26(15) – Temporary Employment  
Section 96.3-7 – Recovery of Overpayment of Benefits  
871 IAC 24.10 – Employer Participation

**STATEMENT OF THE CASE:**

Advance Services, Inc. (employer) appealed a representative's September 19, 2014 decision (reference 03) that concluded Josh L. Ratliff (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 October 13, 2014. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Michael Payne appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the 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? Was the claimant overpaid unemployment insurance benefits, and if so, is that overpayment subject to recovery based upon whether the employer participated in the fact-finding interview?

**FINDINGS OF FACT:**

The employer is a temporary staffing agency. The claimant began taking assignments through the employer on April 24, 2014. He began an assignment that day and worked full time as a production worker at the employer's Osceola, Iowa business client. His last day of work was August 5, 2014. The assignment ended that date because the business client determined that the claimant was not a good fit to become a permanent employee. The business client informed the claimant and then the employer of the completion of the assignment on or about August 5, 2014. 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. The employer did have other work available for the claimant in the Osceola area if he had sought reassignment.

The claimant established a claim for unemployment insurance benefits effective August 24, 2014. A fact-finding interview was held with a Claims representative on September 17, 2014. The employer, through Michael Payne, participated directly in the fact-finding interview. The claimant has received unemployment insurance benefits after the separation in the amount of \$714.

#### **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 both notify the employer of the ending of the assignment and to seek reassignment. Iowa Code § 96.5-1-j; Rule 871 IAC 24.26(15). The claimant failed to seek reassignment as required. Benefits are denied.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a,-b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

**DECISION:**

The representative's September 19, 2014 decision (reference 03) is reversed. The claimant's separation was a voluntary quit through a failure to seek reassignment. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is then otherwise eligible. The employer's account is not subject to charge. The claimant is overpaid \$714, which is subject to recovery.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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