

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FELIX M DELGADO JR
Claimant

APPEAL NO: 09A-UI-11920-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STAFFING PROFESSIONALS LLC
Employer

OC: 07/05/09
Claimant: Appellant (2/R)

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(19) – Temporary Employment

STATEMENT OF THE CASE:

Felix M. Delgado, Jr. (claimant) appealed a representative's August 14, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Staffing Professionals, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 3, 2009. The claimant participated in the hearing. Amy Potratz 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.

ISSUE:

Was there a disqualifying separation from employment?

FINDINGS OF FACT:

The employer is a temporary staffing agency. After a prior period of employment through the employer's predecessor owner, including an assignment that had begun on August 26, 2008 and was still active when the ownership change occurred as of September 29, 2008, the claimant began working through the employer on September 29, 2008. He worked full time as a general laborer on the second at the employer's Des Moines, Iowa business client through April 13, 2009. The assignment ended that date because the business client deemed the assignment to be completed. The business client informed the employer of the completion of the assignment on April 13, 2009. The claimant separately contacted the employer within three days of the end of the assignment on April 15 to seek reassignment, but no further work was immediately available.

On May 29 a representative of the employer contacted the claimant to inquire about whether the claimant could take an assignment to begin on June 1 on the first shift. The claimant expressed some interest but indicated he would need to check on childcare arrangements. Later that day the claimant called the employer back to indicate that he would not be able to secure childcare

quickly enough to start a job on June 1, so the employer determined to find someone else to put on the assignment.

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 section 96.5-1-j. 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.

The claimant did seek reassignment within three days of the ending of the April 13 assignment. Regardless of whether the claimant continued to seek a new assignment or whether he accepted any new offer of work, the separation itself occurred on April 13 and 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, but the claimant's initial expression of interest and subsequent declining of the offer of work on May 29 was not a new period of employment, as he never actually entered into and performed work in the assignment. His failure to enter into the assignment is at most a refusal of the assignment, not a new separation. Benefits are allowed, if the claimant is otherwise eligible.

An issue as to whether the claimant refused a suitable offer of work on May 29 and if so whether it was with or without good cause arose during the hearing. Tied to this is a question as to whether he was or is adequately able and available for work. These issues were not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination. 871 IAC 26.14(5).

DECISION:

The representative's August 14, 2009 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. The

matter is remanded to the Claims Section for investigation and determination of the refusal and able and available issues.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css