

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALMA J CERVANTES
Claimant

APPEAL NO: 06A-UI-09097-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**USA STAFFING INC
LABOR WORLD OF IOWA**
Employer

**OC: 08/06/06 R: 02
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

USA Staffing, Inc., Labor World of Iowa (employer) appealed a representative's September 5, 2006 decision (reference 04) that concluded Alma J. Cervantes (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 September 26, 2006. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Brandon Rost appeared on the employer's behalf. 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.

ISSUE:

Was there a disqualifying separation from employment?

FINDINGS OF FACT:

The employer is a temporary staffing agency. The claimant began her first and only assignment through the employer on May 23, 2006. She worked full-time as an assembler at the employer's business client through July 28, 2006. The assignment ended that date because the business client deemed the assignment to be completed. The business client informed both the claimant and the employer on July 26 that the claimant would no longer be needed on the assignment after July 28, 2006. The claimant did come in to the employer's office on July 28 to pick up a paycheck and also came in and picked up a paycheck on August 4. However, she did not sign the sign-in sheet indicating she was checking in for reassignment as required by the employer's trifold handbook, which also contained other miscellaneous employer policies, and as also required by the employer's attendance and notification policy sheet which the claimant had signed on May 19, 2006; that policy sheet included both the requirement to sign in on the sign-in sheets and also the employer's attendance policy that specified that three absences were grounds for termination.

REASONING AND CONCLUSIONS OF LAW:

The essential question in this case is whether there was a disqualifying separation from employment.

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. Where a temporary employment assignment has ended and the employer is aware of the end of that assignment, the employer is already on "notice" that the assignment is ended and the claimant is available for a new assignment; where the claimant knows that the employer is aware of the ending of the assignment, she has good cause for not separately "notifying" the employer.

Here, the employer was aware that the business client had ended the assignment; it considered the claimant's assignment to have been completed. Regardless of whether the claimant reported for a new 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. Further, the employer's notification policy includes more than the notification provisions alone and, therefore, is not in compliance with the statute. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's September 5, 2005 decision (reference 04) is affirmed. 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 she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/cs