

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA G ECKLEY

Claimant

APPEAL NO. 06A-UI-10975-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INC OF CEDAR RAPIDS

Employer

**OC: 04/30/06 R: 03
Claimant: Appellant (2)**

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(19) – Temporary Employment
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

Sandra G. Eckley (claimant) appealed a representative's November 6, 2006 decision (reference 04) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Manpower Inc. of Cedar Rapids (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 7, 2006. The claimant participated in the hearing. Debbie Chamberlain appeared on the employer's behalf and presented testimony from one witness, Frank Pesina. During the hearing, Employer's Exhibit One was entered into evidence. 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.

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's first and only assignment began on May 17, 2006. She worked full-time as a production worker at the employer's Montezuma, Iowa, business client. Her last day of work on the assignment was October 13, 2006. The assignment ended that date because the business client deemed the assignment to be completed as it was not sufficiently satisfied with her work performance. The business client informed the employer of the completion of the assignment on October 13, 2006; Mr. Pesina, a staffing specialist in the employer's Marshalltown, Iowa, office informed the claimant of the ending of the assignment before she left to report for the assignment on October 16.

During that conversation, the claimant asked for further information as to why she was being released from the assignment, and asked Mr. Pesina, "What should I do now?" He told her he was going to talk further with the business client and that he would call her back. He did not subsequently call the claimant back. The claimant waited a couple days and then on October 18 attempted to call the employer's Grinnell office out of which she had taken the

assignment; however, there was no answer after it rang eight or ten times. She did not make any further attempt to contact the employer.

On May 9, 2006, the claimant signed an "Availability Statement" in which she indicated that she would notify the employer within three working days of the completion of an assignment and would then make weekly contact as to her availability for work. However, while the claimant signed the form which recites that "I have been provided a copy of this agreement," this did not occur; it was given to her to sign with a number of other documents to be signed that day with regard to some training, but no copy to keep was given to her. The claimant did not subsequently contact the employer once a week to seek reassignment as required.

The claimant established an unemployment insurance benefit year effective April 30, 2006. She filed an additional claim effective October 15, 2006.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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 § 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 § 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 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, he 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. Further, the claimant had affirmatively sought further instruction on October 16 as to what she should do; she was not told to call the employer back either in three days or weekly, even though she did attempt to call back within the three days. Also, while the statute does require a contact after the ending of an assignment, it does not require the weekly contacts as specified by the employer. Finally, the claimant did not in fact receive a copy of the form as required by the statute. Therefore, the claimant cannot be disqualified for failure to initiate a successful contact. Benefits are allowed, if the claimant is otherwise eligible.

The final issue is whether the employer's account is subject to charge. 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 January 1, 2005 and ended December 31, 2005. The employer did not employ the claimant during this time and, therefore, the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's November 6, 2006 decision (reference 04) 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 she is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css