

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LONNIE M DIXON JR
LOT 206
2480 – 270TH ST
MONTROSE IA 52639-9565

ADECCO USA INC
C/O TALX UC EXPRESS
PO BOX 66736
ST LOUIS MO 63166-6736

Appeal Number: 06A-UI-02389-DT
OC: 01/29/06 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

ADECCO USA, Inc. (employer) appealed a representative's February 17, 2006 decision (reference 01) that concluded Lonnie M. Dixon, Jr. (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 March 16, 2006. The claimant participated in the hearing. Frank Eckert of TALX Employer Services appeared on the employer's behalf and presented testimony from one other witness, Janelle Case. 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.

ISSUE:

Was there a disqualifying separation from employment?

FINDINGS OF FACT:

The employer is a temporary staffing agency. The claimant began taking assignments through the employer on April 18, 2005. His first assignment was working as a general laborer/forklift operator at the employer's Fort Madison, Iowa mineral refining business on a 7:00 a.m. to 5:30 p.m. Wednesday through Saturday schedule. His last day on that assignment was January 19, 2006. The business client determined to end the claimant's assignment at that time due to his attendance. The claimant had called in absences to the business client on January 20 and January 21 due to illness. He had attempted to also call the employer, but had only reached the answering machine and did not wish to leave a message. On January 23 the business client informed the claimant that it was ending the assignment due to the absences. The claimant then discussed the ending of the assignment with one of the employer's representatives.

The claimant was then placed on another assignment which began on January 24, 2006. He worked full time as a general laborer at the employer's Fort Madison business client on a 4:15 p.m. to 3:00 a.m., Monday through Thursday foam packaging manufacturer. His last day on that assignment was January 26. The assignment ended January 30 because the business client ended the assignment due to attendance because the claimant called in sick on that day. The business client informed the employer it was releasing the claimant from the assignment and the employer informed the claimant. The claimant did not separately contact the employer to seek reassignment as required by the employer's policies.

The claimant had signed a "commitment sheet" on December 17, 2004 that specified it was a receipt of the employer's handbook and a commitment to abide by those policies; the form indicated the type of work being sought and the time or distance he was willing to travel for work. It asserted that the claimant would comply with a code of conduct, bring any concerns regarding pay or an assignment to the employer's attention. It contained an agreement the claimant would not make any "false or defamatory statements" about the employer. The sheet also specified procedures for timecards and payment. One of the items was also an agreement that the claimant would contact the employer for available work upon the conclusion of an assignment.

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 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.

Here, the employer was aware that the business client had ended the assignment; it considered the claimant's assignment to have been completed, albeit. Regardless of whether the claimant formally reported for a new assignment after being informed of the ending of the assignment, the separation is deemed to be completion of temporary assignment and not a voluntary leaving. Further, to the extent that more formal report for a new assignment might have been expected, the employer's "commitment sheet" is not a "clear and concise explanation of the notification requirement" that is "separate from any contract of employment." Iowa Code § 96.5-1-j. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's February 17, 2006 decision (reference 01) 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 he is otherwise eligible.

ld/tjc