

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE S WAGNER
Claimant

APPEAL NO: 11A-UI-10291-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLINTON STAFFING COMPANY
Employer

**OC: 06/19/11
Claimant: Appellant (2/R)**

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(15) – Temporary Employment
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

Nicole S. Wagner (claimant) appealed a representative's July 29, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Clinton Staffing Company / Allstar Staffing (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 11:00 a.m. on August 25, 2011. The claimant received the hearing notice and responded by calling the Appeals Section on August 15, 2011. She indicated that she would be available at the scheduled time for the hearing at a specified telephone number; she was advised that if she did not hear from the administrative law judge within a few minutes after 11:00 a.m., she was to recontact the Appeals Section. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, the claimant did not participate in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. The record was considered closed at 11:10 am. At 11:50 a.m., the claimant called the Appeals Section and requested that the record be reopened; she had not heard her cell phone ring when the administrative law judge called for the hearing, and had not remembered the instruction to call back in within a few minutes if she did not receive the call as scheduled. Because the administrative law judge has determined that the information in the administrative file results in a conclusion in favor of the claimant, the administrative law judge will not further address the claimant's request to reopen the record. Based on a review of the available information 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 was working on an assignment at an educational institution client from August 19, 2010 through May 31, 2011. The assignment

ended that date because the client determined the claimant was no longer qualified for the position. The employer first asserted in its June 27, 2011 protest to the notice of claim that 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, but rather asserted that she did not seek reassignment until June 6. However, in a subsequent letter dated July 27, a representative for the employer indicated that "Nicole did call us on 06/02/2011 and made herself available for work." The letter continues, "Since then she has been offered 2 one night assignments as a banquet server of which she has declined. They were on 06/11/2011 and 07/16/2011."

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 she 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 § 96.5-1-j; 871 IAC 24.26(15). The intent of the provision 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.

Here, the claimant did seek reassignment within the three-day period. Regardless of whether the claimant continued to seek a new assignment or whether she declined assignments in the future, the separation itself 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. Benefits are allowed, if the claimant is otherwise eligible.

An issue as to whether the claimant did refuse suitable offers of work without good cause for June 11 and July 16, 2011 arose as a result of the review of the record. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's July 29, 2011 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 she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the work refusal issues.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs