

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LEW E WINKOWITSCH**

Claimant

**APPEAL NO: 15A-UI-00744-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOHERTY STAFFING SOLUTIONS**

Employer

**OC: 12/14/14**

**Claimant: Respondent (1)**

Section 96.5-1-j – Temporary Employment  
871 IAC 24.26(15) – Temporary Employment  
Section 96.7-2-a(2) – Charges Against Employer’s Account

**STATEMENT OF THE CASE:**

Doherty Staffing Solutions (employer) appealed a representative’s January 13, 2015 (reference 02) decision that concluded Lew E. Winkowitsch (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 February 23, 2015. The claimant participated in the hearing. Glenda Niemiec 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.

**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 began taking an assignment through the employer on August 26, 2015. He worked full time as a welder at the employer’s Milford, Iowa business client through December 19, 2014. The assignment ended that date because the business client informed the claimant that there would be no more work until the following year. The employer was aware that the claimant had been released from the assignment, and there was no showing there was any other work available for the claimant with the employer after December 19. In fact, an arrangement had already been made on December 10 and confirmed on December 16 that the claimant would become an employee of the business client as of December 21. The employer asserted that the claimant did not separately 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.

The claimant established an unemployment insurance benefit year effective December 14, 2014.

**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 § 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.

Where a temporary employment assignment has ended by the completion of the assignment of and the employer is aware of the ending 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. Rule 871 IAC 24.26(19).

Here, the employer was aware that the business client had ended the assignment; it considered the claimant’s assignment to have been completed. The employer also knew or should have known that as of December 21 the claimant was an employee of the business client, albeit laid off until after the start of the New Year. The claimant is not required by the statute to remain in regular periodic contact with the employer in order to remain “able and available” for work for purposes of unemployment insurance benefit eligibility. Regardless of whether the claimant continued to seek a new assignment, 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.

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 July 1, 2013 and ended June 30, 2014. 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 January 13, 2015 (reference 02) decision 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. The employer's account is not subject to charge in the current benefit year.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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