

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT G WALSH
Claimant

APPEAL NO: 12A-UI-14918-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC/SEDONA STAFFING
Employer

OC: 11/11/12

Claimant: Respondent (1)

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(15) – Temporary Employment

STATEMENT OF THE CASE:

L A Leasing, Inc. / Sedona Staffing (employer) appealed a representative's December 12, 2012 decision (reference 01) that concluded Robert G. Walsh (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 January 24, 2013. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Colleen McGuinty appeared on the employer's behalf and presented testimony from one other witness, Nicole Sabin. 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's most recent assignment prior to the issuance of the representative's decision began on February 29, 2012. He worked full time as a clerical worker at the employer's business client through about April 27, 2012. He suffered a work-related injury on or about that date. The employer then placed him on light duty doing work at a local food bank. His last day working on that basis was June 29, 2012.

On July 2, 2012 the claimant contacted the employer to report that the doctors had taken off of the workers' compensation/light-duty restrictions. As a result, under the employer's rules he would no longer be eligible to work the light-duty assignment at the food bank. The claimant indicated a willingness to return to work on an assignment, including returning to work on the assignment he had been working when injured. The employer indicated that it would check with the business client as to when the claimant could return to work on the assignment.

The employer did not attempt to recontact the claimant until July 9. On that date it attempted three different phone numbers for the claimant, but was unable to reach him to say that he could report back to work at the prior assignment. The employer asserted that the claimant voluntarily quit by not again contacting the employer to seek reassignment.

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.

Here, the employer was aware that the light-duty assignment was completed. By the claimant's contact with the employer on July 2, he was clearly making himself available to the employer for new work. He substantially complied with the requirement that he seek reassignment. 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 or to repeatedly ask for reassignment 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.

DECISION:

The representative's December 12, 2012 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css