

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESUS CHAVARRIA
Claimant

APPEAL NO: 09A-UI-18173-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES – MARSHALLTOWN
Employer

OC: 10/18/09

Claimant: Respondent (2/R)

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(19) – Temporary Employment
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Temp Associates – Marshalltown (employer) appealed a representative's November 25, 2009 decision (reference 04) that concluded Jesus Chavarria (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 13, 2010. 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. Judy Rebik appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. 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 began taking assignments through the employer on March 31. His first and to date only assignment began on that date, working full time as a production laborer at the employer's Marshalltown, Iowa business client. His last day on the assignment was September 25, 2009. The assignment ended that date because the business client deemed the assignment to be completed. The business client informed both the claimant and the employer of the eminent ending of the assignment on September 24, 2009. 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. On March 30, 2009 the claimant had signed a statement in which he acknowledged he needed to seek reassignment.

The claimant did not contact the employer until October 2, 2009; at that time he indicated that while he was interested in going back to the original business client should they need additional

labor in the future, he was hesitant to agree to going on assignments with other business clients.

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 during a time he could have been offered an available new assignment to avoid any liability for unemployment insurance benefits.

Here, the claimant was not making himself available for other assignments other than wishing to return back to work with the original business client. As he did not make himself available for reassignment within three working days of the ending of his assignment as required, under the statute he is deemed to have quit his employment with the employer without good cause.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's November 25, 2009 decision (reference 04) is reversed. The claimant's separation was a voluntary quit by failing to make himself available for reassignment to another assignment within three days of the ending of the temporary assignment, after having been notified of his responsibility to do so. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount,

provided the claimant is then otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs