IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

JEFFREY D WHENNEN
Claimant

ADVANCE SERVICES INC
Employer

APPEAL NO: 13A-UI-05202-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/07/13
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Advance Services, Inc. (employer) appealed a representative's May 1, 2013 decision (reference 01) that concluded Jeffrey D. Whennen (claimant) was qualified to receive unemployment insurance benefits after an at least temporary separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 11, 2013. The claimant participated in the hearing. Michael Payne appeared on the employer's behalf. During the hearing, Employer's Exhibits One, Two, and Three were 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's first and to date only assignment through the employer began on September 17, 2012. He worked full time as a general laborer at the employer's Hedrick, Iowa business client on the third shift through the morning of April 11, 2013, finishing at 6:30 a.m. The employer's on-site representative called the claimant at about 11:00 a.m. to inform him that the business client was ending the assignment. The employer asserted that the reason the business client ended the assignment was due to dissatisfaction with the claimant's attendance; however, the employer had no specifics regarding the claimant's attendance, and the claimant had not been warned that his position was in jeopardy.

The employer relied upon second-hand testimony to assert that the claimant did not request reassignment from the employer within three days of the end of the assignment as required by the employer's policies to avoid being considered to be a voluntary quit. However, the claimant testified that when the employer's on-site representative spoke to him on April 11 he had immediately asked that representative for reassignment, but that she responded that she could not address that question with him at that time.

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; 871 IAC 24.26(15).

Here, the claimant substantially complied with the requirement to seek reassignment by asking the employer's on-site representative for reassignment at the time she informed him of the ending of the assignment. 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.

DECISION:

The representative's May 1, 2013 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs