

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ARTURO QUINTERO**  
Claimant

**APPEAL NO. 100-UI-15703-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SUPERIOR STAFFING INC**  
Employer

**OC: 01/31/10**  
**Claimant: Appellant (2)**

Section 96.5-1-j – Temporary Employment  
871 IAC 24.26(19) – Temporary Employment  
Section 96.7-2-a(2) – Charges Against Employer’s Account

**STATEMENT OF THE CASE:**

Arturo Quintero (claimant) appealed a representative’s August 17, 2010 decision (reference 05) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Superior Staffing, Inc. (employer). After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on January 12, 2011. The claimant participated in the hearing. Kate Druivenga 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 assignments through the employer in 1998; but, prior to April 7, 2010, he last worked for the employer in 2001. He reapplied for employment with the employer as of April 7, 2010. He was offered and accepted an assignment that began on April 12. He worked full-time as a box folder at the employer’s mail processing business client through April 14, 2010. The assignment ended that date because the business client no longer needed him. 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. The employer normally provides copies of a statement acknowledging awareness of the three-day reporting policy to the employee at the time the employee makes application; however, when the claimant made his application for reemployment with the employer on April 7, he was in a hurry, and he did not receive a copy of the acknowledgement statement.

The claimant did not contact the employer to seek reassignment until April 30. He was then placed on another assignment beginning May 24, which he continued to work through November 18, 2010.

The claimant established an unemployment insurance benefit year effective January 31, 2010, after a separation from another employer for which he had earned in excess of \$3,420.00. His weekly benefit amount was calculated to be \$342.00. The base period for that claim year is October 1, 2008 through September 30, 2009, in which there are no wage credits from the employer. After the ending of his April 2010 assignment with the employer, he reopened his claim by filing an additional claim effective April 18. When a notice of this reopening of his claim was sent to the employer, the employer protested, asserting that the claimant should be disqualified due to a separation on August 27, 2001. That is the date used in the representative's decision concluding that the claimant was disqualified from receiving unemployment insurance benefits.

As of the date of this decision, the claimant had most recently filed a weekly claim for unemployment insurance benefits effective June 19, 2010; he did not reopen his claim or establish another claim year since the ending of the most recent assignment November 18, 2010.

#### **REASONING AND CONCLUSIONS OF LAW:**

The essential question in this case is whether there was a disqualifying separation from employment.

Even though there may have been a prior period of employment that could have ended for a disqualifying reason on August 27, 2001, that separation has no effect on the claimant's eligibility or the employer's chargeability during his January 31, 2010 claim year. Even if the separation could have been for a disqualifying reason at the time, he has earned at least ten times his weekly benefit amount in other employment since the 2001 separation, so that separation would not disqualify him under any circumstance. Iowa Code § 96.5-1-g; Iowa Code § 96.5-2-a. Further, as discussed below, as the employer is not a base period employer for the January 31, 2010 claim year, its account is not subject to charge during this benefit year under any circumstance. Therefore, the assertion and conclusion that the August 27, 2001 separation has bearing on the claimant's January 31, 2010 claim is erroneous. The remainder of this decision will focus on the question as to whether the April 14, 2010 ending of the initial assignment might be disqualifying to the claimant after he reopened his claim effective April 18, 2010.

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. Specifically, the statute provides in pertinent part:

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

[Emphasis added.]

The employer provided second-hand testimony that a copy of the signed acknowledgement document had been given to the claimant on April 7, 2010. However, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the employer's witness might have been mistaken or made an overly broad assumption as to what actually happened between the claimant and the employer's representative who spoke to him on April 7.

Under the circumstances, the administrative law judge accepts the claimant's first-hand testimony that he was in a hurry and was not given a copy of what he had signed before leaving to be more credible.

As a result, the employer has not established compliance with the statute as necessary to bind the claimant to the three-day requirement. The April 14, 2010 separation itself is therefore deemed to be completion of temporary assignment and not a voluntary leaving. 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 employer did not employ the claimant during the base period for his January 31, 2010 claim year, and therefore the employer is not currently a base period employer and its account is not chargeable for benefits paid to the claimant during that claim year. If the claimant establishes a new claim year in which his 2010 employment is part of the base period, the employer would then have an opportunity to protest its chargeability and the claimant's eligibility with respect to the ending of the most recent assignment as of November 18, 2010.

**DECISION:**

The representative's August 17, 2010 decision (reference 05) is reversed. The claimant's separation on August 27, 2001 is moot as to his January 31, 2010 claim. The claimant's separation as of April 14, 2010 was not a voluntary quit but was the completion of a temporary assignment. The claimant is qualified to receive unemployment insurance benefits as of the reopening of his claim April 18, 2010, if he is otherwise eligible. The employer's account is not subject to charge in the January 31, 2010 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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