

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN E HINTON

Claimant

APPEAL NO: 09A-UI-07095-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC

Employer

OC: 03/22/09

Claimant: Appellant (2)

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(19) – Temporary Employment

STATEMENT OF THE CASE:

Stephen E. Hinton (claimant)) appealed a representative's April 30, 2009 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from DES Staffing Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 3, 2009. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, 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 only assignment through the employer began on or about April 17, 2008. He worked two days on the second shift in the shipping department of the employer's Iowa City, Iowa business client. On the following Monday morning the claimant contacted the employer to learn if he was to return to the assignment, but was told that there was no more work for him on the assignment, and there were no other assignments currently available. The claimant subsequently moved to East Moline to seek other employment.

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. 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. Further, the claimant did immediately seek reassignment, but no other work was available. He was 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 April 30, 2009 decision (reference 04) is reversed. 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/pjs