

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOD M STRUB
Claimant

APPEAL NO. 09A-UI-19219-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

USA STAFFING INC / LABOR WORLD IA
Employer

Original Claim: 05/31/09

Claimant: Appellant (2)

Section 96.5-1-j – Temporary Employment
871 IAC 24.26 – Temporary Employment

STATEMENT OF THE CASE:

Tod M. Strub (claimant) appealed a representative's December 18, 2009 decision (reference 09) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from USA Staffing, Inc. / Labor World, IA (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 4, 2010. The claimant participated in the hearing. The employer 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. 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 began taking assignments through the employer's Dubuque, Iowa, office on or about July 21, 2008. He primarily worked assignments as a flagger for various road construction business clients. He had a somewhat longer term assignment on which his last day of work was October 8, 2009. He did seek and receive reassignment from the employer after that work was completed. His last day working on any flagging assignment was on or about October 30, 2009. The assignment would have ended after another half day of work on October 31, but the claimant missed work that day as a result of transportation problems. He had previously been told that there would be no further upcoming work available.

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 and could have been offered an available new assignment to avoid any liability for unemployment insurance benefits. 871 IAC 24.26(15).

Here, the employer has not established that it gave the claimant notice of the requirement to seek reassignment or that its policy was in compliance with the statutory provisions. More importantly, the claimant had been informed in advance that there would be no work available in the foreseeable future; seeking reassignment within three days of the ending of the assignment would have been futile. The claimant is not required by the statute to remain in constant contact with the employer after the ending of an assignment in order to remain "able and available" for work for purposes of unemployment insurance benefit eligibility. The separation itself is deemed to be completion of temporary assignment and not a voluntary leaving. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's December 18, 2009 decision (reference 09) 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/kjw