

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAMON B BANUELOS**  
Claimant

**APPEAL NO. 08A-UI-01888-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES STAFFING SERVICES INC**  
Employer

**OC: 05/13/07 R: 02**  
**Claimant: Appellant (2/R)**

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:**

Ramon B. Banuelos (claimant) appealed a representative’s February 22, 2008 decision (reference 03) 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 March 11, 2008. The claimant participated in the hearing. Amy MacGregor appeared on the employer’s behalf and presented testimony from one other witness, Elisa Navarro. Ike Rocha served as interpreter. 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 on July 25, 2007. On that initial assignment, he worked full time as a second shift production worker at the employer’s Des Moines, Iowa, business client through January 18, 2008. The assignment ended that date because the business client deemed the assignment to be completed. The business client informed the employer of the completion of the assignment on January 18, 2008, and the employer’s representative then contacted the claimant to explain that the assignment was over. When the claimant spoke to the employer’s representative regarding the ending of the assignment, he asked about additional work but was advised that there currently was no other work available. Later that day he went to the employer’s office to pick up his check and was again informed that there was currently no other work available.

Some evidence was presented suggesting that the employer had made an offer of employment to the claimant on January 30 that he was unable to accept due to transportation issues. Additional evidence was presented indicating that the claimant had accepted a new assignment with the employer as of February 20, 2008, but that he had ended that assignment after two days.

The claimant established an unemployment insurance benefit year effective May 13, 2007. He filed an additional claim effective January 20, 2008.

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

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

Iowa Code § 96.5-1-j provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department, but the individual shall not be disqualified if the department finds that:

j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

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.

871 IAC 24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code § 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code § 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

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 and the employer is aware of the end 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.

Here, the employer was aware that the business client had ended the assignment on January 18, 2008; it considered the claimant's assignment to have been completed. The claimant did immediately make himself available to the employer's representative to whom he spoke on January 18 for a new assignment but no other work was available at that time. Regardless of whether the claimant subsequently sought a new assignment, the January 18, 2008 separation 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.

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 claimant's base period began January 1, 2006 and ended December 31, 2006. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

An issue as to whether the claimant refused a suitable offer of work or was able and available for work on January 30, 2008 arose during the hearing. Also, an issue has arisen as to whether there was a subsequent separation from employment on or about February 22, 2008. These issues have not previously been subject to review and were not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on those issues. 871 IAC 26.14(5).

#### **DECISION:**

The representative's February 22, 2008 decision (reference 03) 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. The matter is remanded to the Claims Section for investigation and determination of the refusal, able and available, and subsequent separation issues.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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