

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIM M TRACY
Claimant

APPEAL NO: 13A-UI-06264-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 04/21/13

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

QPS Employment Group, Inc. (employer) appealed a representative's May 14, 2013 decision (reference 01) that concluded Tim M. Tracy (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 2, 2013. The claimant participated in the hearing and was represented by William Habhab, Attorney at Law. Rhonda Hefter de Santisteban appeared on the employer's behalf and presented testimony from one other witness, Kaila Bloomberg. During the hearing, Employer's Exhibit One was 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 only assignment began on February 13, 2012. He worked full time as a loader/unloader at the employer's Fort Dodge, Iowa business client through February 15, 2013. The business client determined to end the assignment after February 18, 2013. February 18 was a holiday, but the claimant had been found on the business client's property after work. He had then been informed through his fiancé that the police had instructed that he was not to return to the premises or talk to the business client on February 19. On February 20 he did call the business client and it was confirmed to him that his assignment was over and that he was to turn in his keys.

The employer does not assert that the ending of the assignment by the business client was for a disqualifying reason; rather, the employer asserts that the claimant did not separately 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. However, the claimant provided credible testimony to the effect that shortly after he finished his phone call

with the business client on February 20 he then called the employer's Fort Dodge office to further inquire as to what was going on with the assignment, and that the person to whom he spoke confirmed that the assignment was ended. When the claimant inquired if there was any other work, the person advised him that there was not currently, but that the employer would contact him if something suitable became 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 could have been offered an available new assignment to avoid any liability for unemployment insurance benefits.

Here, the employer was aware that the business client had ended the assignment; it considered the claimant's assignment to have been completed. While the employer's records may not reflect that the claimant made contact to seek reassignment, the claimant has provided sufficient credible testimony that he did make the required contact. 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 14, 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css