

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUCAS R KRESS

Claimant

APPEAL NO: 13A-UI-09528-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 02/10/13

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Advance Services, Inc. (employer) appealed a representative's August 15, 2013 decision (reference 02) that concluded Lucas R. Kress (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 September 24, 2013. This appeal was consolidated for hearing with one related appeal, 13A-UI-09529-DT. The claimant participated in the hearing. Michael Payne appeared on the employer's behalf. During the hearing, Employer's Exhibits One, Two, and Three were 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 to date only assignment through the employer began on June 17, 2013. He worked full time as a welder at the employer's Marion, Iowa business client on the thirteenth shift through July 23, 2013. The employer's representative told the claimant that afternoon that the business client was ending the assignment because there was not sufficient work for all employees. The business client also informed the employer that the claimant's assignment was ended due to a lack of work.

After the claimant finished his shift on the afternoon of July 23 he went immediately to the employer's office in Cedar Rapids. The employer relied upon second-hand testimony to assert that the claimant did not request reassignment from the employer either on that day or otherwise within three days of the end of the assignment as required by the employer's policies to avoid being considered to be a voluntary quit. However, the claimant testified that when he went to the employer's Cedar Rapids office he immediately asked the employer's representative in that office if the employer had any other work. That representative told him the only work available was working starting the next day at the city dump for \$9.00 per hour. The claimant

declined that work because the wage was too low. The representative then indicated that there was no other work available at that time.

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; 871 IAC 24.26(15).

Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the claimant complied with the requirement to seek reassignment by asking the employer's representative for reassignment the same day the assignment ended. The claimant is not required by the statute to remain in regular periodic contact with the employer or to continue to seek reassignment 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 August 15, 2013 decision (reference 02) 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