

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CALVIN JONES
Claimant

APPEAL NO. 10A-UI-15936-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 04/04/10
Claimant: Appellant (2)

Section 96.5-1-j - Separation from Temporary Employment

STATEMENT OF THE CASE:

Calvin Jones filed a timely appeal from the representative's decision dated November 5, 2010, reference 03, that denied benefits. After due notice was issued, a telephone hearing was held January 6, 2011. The claimant participated personally. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

ISSUE:

At issue is whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Calvin Jones began employment with Express Services Inc. on or about July 31, 2009. Mr. Jones worked at various job assignments for Express Services Inc., but primarily was assigned to work as a truck unloader for the client employer M B M Company. Mr. Jones completed a work assignment on or about September 19, 2010 and contacted the temporary employment service that day for his additional assignment. However, additional assignments were not available to him at that time. Mr. Jones regularly contacts the temporary employment service for job assignments and has sought work with other temporary employers as well.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant left employment with good cause attributable to the employer.

Iowa Code section 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.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

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 section 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 section 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 administrative law judge concludes based upon the totality of the evidence in the record that the claimant was not an on-call worker holding himself out solely for employment with Express Services Inc. during the period in question.

The evidence establishes that Mr. Jones gave notice to the temporary agency employer that he was available for employment at the conclusion of each temporary assignment and that he wished to continue to work for the company when work was available. Because the evidence in the record establishes that the claimant gave the temporary employer notice of his availability at the end of his most recent assignment on or about September 19, 2010 and no further work was available at that time, benefits are allowed providing that Mr. Jones meets all other eligibility requirements of Iowa law.

DECISION:

The unemployment insurance decision dated November 5, 2010, reference 03, is reversed. The claimant left employment with good cause attributable to the employer. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css