

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE M SHANNON
Claimant

APPEAL NO. 14A-UI-02877-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 11/10/13
Claimant: Appellant (2)

Section 96.5(1)(j) – Separation from Temporary Employment

STATEMENT OF THE CASE:

Diane Shannon filed a timely appeal from the March 7, 2014, reference 03, decision that denied benefits in connection with separation from Express Services, Inc. After due notice was issued, a hearing was held on April 8, 2014. Ms. Shannon participated. At the time of the hearing, the employer waived its participation in the hearing. Exhibit A was received into evidence.

ISSUE:

Whether the claimant's separation from the employment disqualifies her for unemployment insurance benefits or relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Express Services is a temporary employment agency. Diane Shannon most recently performed work for the employer in a full-time, temporary assignment at Anderson Window in Dubuque. The assignment started on December 7, 2013. Ms. Shannon most recently performed work in the assignment on January 24, 2014. At that time, Ms. Shannon went on vacation to Mexico. Express Services and the Anderson Windows had both approved her absence from the assignment for that purpose. Ms. Shannon left for Mexico on January 26, 2014 and returned from Mexico on February 3, 2014. When she returned from Mexico, Ms. Shannon had a message on her answering machine that indicated Anderson Windows had ended the assignment due to a lack of work orders. On February 4, 2014, Ms. Anderson contacted Express Services to inquire about an additional assignment, but was told there was no assignment available for her at that time.

REASONING AND CONCLUSIONS OF LAW:

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 evidence in the record establishes that the employer and client business approved the absence that commenced January 25, 2014. While Ms. Shannon was away on an approved vacation, the client business laid her off due to a lack of work orders. Ms. Shannon did not learn that the assignment was completed until February 3, 2014, when she returned from her approved vacation. Ms. Shannon contacted the employer the next day to request a further assignment, but the temporary employment firm did not have any work for her at that time. The employer waived its presence at the hearing and did not present any evidence to establish that it had an end-of-assignment notification policy that would require Ms. Shannon to contact the temporary employment agency within three working days of the end of the assignment to request a new assignment. Accordingly, Ms. Shannon fulfilled her contract of hire when she performed that work that was available to her in the assignment that came to an end while she was on vacation.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Shannon's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Ms. Shannon is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The claims deputy's March 7, 2014, reference 03, decision is reversed. The claimant's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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