

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDRE W HILL
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 16A-UI-08269-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/19/16
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the July 27, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit from employment by failing to notify the temporary employment firm within three working days of the completion of his last work assignment. The parties were properly notified of the hearing. A telephone hearing was held on August 16, 2016. The claimant, Andre W. Hill, participated personally. The employer, Express Services Inc., participated through Staffing Consultant Ann Syakhasorh. Claimant's Exhibit A was admitted.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Did the claimant voluntarily quit by not reporting for an additional work assignment within three business days of the end of the last assignment?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was a temporary employee of a temporary employment firm. Claimant began his employment on July 23, 2015. The claimant completed paperwork with the employer, including signing the employer's availability statement. A copy of this availability statement and the employer's policy were not offered into evidence. The policy states that if an employee's job assignment ends they have to notify this employer within forty-eight hours that they are looking for work. Further, they have to continue to call in to the employer and express they are looking for work on a weekly basis.

Claimant received his job assignment from the employer to work full time at Federal Foam. Claimant's job duties included operating machines. This job assignment began December 4, 2015 and ended on May 19, 2016. The reason the job assignment ended was because the client was dissatisfied with his work.

On May 10, 2016 while claimant was working he could not breathe. His supervisor called him an ambulance and he was taken by ambulance to the hospital. He had developed a lung infection. Claimant was released and returned to work on May 11, 2016. Claimant clocked in to work on May 11, 2016 and then was told that he needed a release from his doctor stating that he could work without restrictions due to his lung infection. Claimant was also told that he needed a release from his doctor regarding a previous neck injury he suffered approximately two weeks prior to this incident.

A worker's compensation claim had been filed regarding claimant's neck injury at work and he was being treated by the employer's physician, which was located on the premises of Federal Foam. Claimant immediately visited with the employer's physician on May 11, 2016 and received a release to work regarding his previous neck injury. Claimant was unable to see his personal physician regarding his lung infection until May 18, 2016. Claimant was told by his supervisor at Freedom Foam that he was not allowed to return to work until both releases were obtained. Claimant contacted this employer on May 11, 2016 and informed the secretary that he was unable to make an appointment with his personal physician until May 18, 2016 and that he was not allowed to return to work without a release.

Claimant received a release regarding his lung infection condition from his treating physician on May 18, 2016, with no restrictions. Claimant personally delivered this release to this employer and asked the manager whether or not he could return to Federal Foam. She stated that she needed to speak with Federal Foam first and would let the claimant know what they stated.

On May 19, 2016 this employer tried to contact claimant to let him know his assignment had ended with Freedom Foam. On either May 20, 2016 or May 23, 2016 claimant spoke to this employer and learned that his assignment had ended. Claimant asked if there was more work available to him and was told that there not at that time and they would contact him if work became available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the separation was with good cause attributable to the employer. Benefits are allowed.

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. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

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

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

Iowa Admin. Code r. 871-24.26(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 purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment. Since he contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and there was no work available, no disqualification is imposed. As such, the claimant complied with Iowa Code section 96.5(1)j and he did not voluntarily quit without good cause attributable to the employer.

Further, claimant was told by his supervisor at Freedom Foam and this employer that he was not to return to work until he had two separate releases to come back to work. Claimant was absent from work from May 12, 2016 through May 20, 2016 because he was told not to report. The employer has failed to prove any job-related misconduct that would disqualify the claimant from receiving benefits. Benefits are allowed.

DECISION:

The July 27, 2016, (reference 01) unemployment insurance decision is reversed. The claimant's separation from employment was not disqualifying. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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