

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDRE A COLLINS
Claimant

APPEAL NO. 07A-UI-07331-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

**OC: 06/17/07 R: 03
Claimant: Appellant (2)**

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(19) – Temporary Employment

STATEMENT OF THE CASE:

Andre A. Collins (claimant) appealed a representative's July 18, 2007 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Express Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 15, 2007. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was there a disqualifying separation from employment?

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The employer is a temporary staffing agency. The claimant began taking assignments through the employer's Mason City, Iowa, office on or about May 22, 2006. He had two assignments, with the final assignment beginning on or about February 2, 2007. He worked full time as an assembly worker at the employer's Mason City, Iowa, business client through approximately March 30, 2007. The assignment ended that date because the business client deemed the assignment to be completed. The employer and the claimant were in communication regarding the ending of the assignment.

The employer discussed with the claimant a potential assignment in Charles City, Iowa to begin about the end of April 2007. However, before the claimant could enter into the assignment his car broke down, so he was unable to accept the assignment at that time. Due to his car problems, he moved to Iowa City at the end of May, where he now has transportation.

The claimant established an unemployment insurance benefit year effective June 17, 2007.

REASONING AND CONCLUSIONS OF LAW:

The essential question in this case is whether there was a disqualifying separation from employment.

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. 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.

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 § 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 § 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.

Here, the employer was aware that the business client had ended the assignment; it considered the claimant's assignment to have been completed. The separation 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.

The resulting issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code § 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(4) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7)).

At the time the employer discussed the potential new assignment with the claimant, he did not have viable transportation and so was not able and available for work. However, as of the time the claimant established his claim he now has adequate transportation to be able and available for work. As being able and available is a week to week qualification or disqualification, and he has been able and available for work since establishing his unemployment insurance claim, the prior lack of transportation no longer disqualifies him from eligibility. 871 IAC 24.1(16).

DECISION:

The representative's July 18, 2007 decision (reference 04) is reversed. The claimant's separation was not a voluntary quit but was the completion of a temporary assignment. The claimant was not able and available for work at the time the potential new assignment was discussed in late April 2007, but has been able and available since establishing his claim for unemployment insurance benefits effective June 17, 2007. 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