

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOYCE A DJUTH

Claimant

APPEAL NO. 07A-UI-08525-S2T

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

EXPRESS SERVICES INC

Employer

**OC: 04/22/07 R: 02
Claimant: Respondent (4)**

Section 96.4-3 – Able and Available
Section 96.5-1-j – Separation from Temporary Employer
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Express Services (employer) appealed a representative's August 30, 2007 decision (reference 02) that concluded Joyce Djuth (claimant) was eligible to receive unemployment insurance benefits based on her separation from work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 19, 2007. The claimant participated personally. The employer participated by Kerri Peterson, Personnel Supervisor.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason and whether she was able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services at Rain and Hail Insurance from June 29 through July 31, 2007, and again from August 28 through September 11, 2007. She signed a document indicating that she was to contact the employer within three days following the completion of an assignment to request placement in a new assignment. The employer did not give the claimant a copy of the document.

On July 31, 2007, the claimant was laid off from work at Rain and Hail Insurance. She did not seek reassignment from the employer because she knew she would be called back to work in another month. In addition the claimant had personal affairs to handle. She was out of town from August 15 through 24, 2007.

The claimant completed her last assignment on September 11, 2007, and sought reassignment from the employer immediately. No work was available.

REASONING AND CONCLUSIONS OF LAW:

First, the administrative law judge finds the claimant was not separated from the employer for any disqualifying reason.

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.

As an employee of a temporary service, the employer must advise the claimant of a three-day notice requirement and give the claimant a copy of that requirement. The employer did not provide the claimant with the proper notice requirements and has, therefore, failed to satisfy the requirements of Iowa Code section 96.5-1-j. Benefits are allowed as of September 12, 2007.

Second, the administrative law judge finds the claimant was not available for work from August 5 through September 11, 2007.

871 IAC 24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

871 IAC 24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant was hired as a full-time worker. She is not considered unemployed from August 28 through September 11, 2007. She is disqualified for being unavailable for work.

When an employee requests and is granted time off, she is considered to be unavailable for work. The claimant is considered to be unavailable for work from August 1 through August 24, 2007, because she was taking care of personal issues and out of town. In effect she was requesting and being granted time off. The claimant is disqualified from receiving unemployment insurance benefits from August 5, to August 28, 2007, due to her unavailability for work.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's August 30, 2007 decision (reference 02) is modified in favor of the appellant. The claimant is disqualified from receiving unemployment insurance benefits from August 5, to September 11, 2007, due to her unavailability for work. The claimant is eligible to receive unemployment insurance benefits as of September 12, 2007, due to her separation from employment. The claimant is overpaid benefits in the amount of \$582.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs