

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA R KIRK
Claimant

APPEAL NO. 10A-UI-09721-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 05/16/10
Claimant: Respondent (5)

871 IAC 24.1(113) – Layoff

871 IAC 24.22(2)(j) – Reemployment at the End of a Negotiated Leave of Absence

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 21, 2010, reference 04, decision that allowed benefits. After due notice was issued, a hearing was held on August 25, 2010. Claimant Angela Kirk participated. Brandy Whittenbaugh, Staffing Consultant, represented the employer.

ISSUE:

Whether Ms. Kirk separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Angela Kirk commenced her employment relationship with Express Services in November 2009 and worked in two full-time temporary employment work assignments with the same client agency, Linn County Public Health, where she performed data entry work. The first assignment ran from November 2009 until February 26, 2010. The second assignment started on March 1, 2010, and Ms. Kirk performed work in that assignment until April 8, 2010. Ms. Kirk was pregnant at the time she started her employment and disclosed this to the employer. Ms. Kirk continued to work as long as possible before her expected delivery date. Ms. Kirk delivered her baby on Saturday, April 10, 2010. Prior to Ms. Kirk going off work, Ms. Kirk's supervisor instructed Ms. Kirk to have Express Services check with Linn County Public Health when Ms. Kirk was ready to come back to work to see whether additional work was available. Express Services placed Ms. Kirk on "inactive status," but expected Ms. Kirk would be returning to the employment.

Ms. Kirk contacted Express Services on Tuesday, May 4, 2010, to indicate she was ready to return to work. Ms. Kirk spoke with Ryan Ringenberg. Mr. Ringenberg told Ms. Kirk he would check with Linn County Public Health to see whether they had further work for Ms. Kirk. Mr. Ringenberg did not say anything to Ms. Kirk to indicate that her return to the work was contingent on her providing any type of medical release. Ms. Kirk's pregnancy and delivery had been without complication and Ms. Kirk's doctor had not restricted her from working.

Mr. Ringenberg told Ms. Kirk to check back on the following Friday. Ms. Kirk checked back on Thursday and learned that Linn County Public Health had no more work for. Express Services had no additional work for Ms. Kirk at that time.

REASONING AND CONCLUSIONS OF LAW:

Iowa Workforce Development rule 871 IAC 24.1(113) provides as follows:

24.1(113) Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, if the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed, the individual is considered as having voluntarily quit and therefore is ineligible for benefits. 871 IAC 24.22(j)(2).

Iowa Code section 96.5-1 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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The weight of the evidence establishes that Ms. Kirk never formed an intention to sever the employment relationship or her relationship with the client business. The weight of the evidence establishes that Ms. Kirk reasonably concluded that she was beginning an approved leave of absence on April 9, 2010, one day before she gave birth. The employer did not take any steps to disabuse Ms. Kirk of that understanding. The weight of the evidence indicates that Ms. Kirk contacted the employer at the end of the leave period, but that the employer had no work for her at that time. At no point did the employer suggest to Ms. Kirk that it deemed her to have quit the employment or otherwise separated from the employment. At no point did the employer convey to Ms. Kirk that she would be required to present a medical release to return to work after an unremarkable pregnancy and delivery. The weight of the evidence indicates that the employer failed to reemploy Ms. Kirk at the end of an approved leave of absence. The separation is deemed a layoff. Ms. Kirk is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

Based on the employer's assertion that Ms. Kirk has refused an offer of employment since she established her claim for benefits, this matter will be remanded to the Claims Division so that that issue and Ms. Kirk's continued availability for work may be determined.

DECISION:

The Agency representative's June 21, 2010, reference 04, decision is modified as follows. The employer failed to re-employ the claimant at the end of an approved leave of absence. The claimant is deemed laid off. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

This matter is remanded to the Claims Division for determination of whether the claimant has refused a suitable offer of employment and whether the claimant continues to be available for work.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw