

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK SCHOLTES

Claimant

APPEAL NO. 09A-UI-04868-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC

Employer

Original Claim: 02/15/09

Claimant: Appellant (2)

Iowa Code § 96.5-1-j - Voluntary Quit of Temporary Employment

STATEMENT OF THE CASE:

Mark Scholtes (claimant) appealed an unemployment insurance decision dated March 18, 2009, reference 05, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Express Services, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 23, 2009. The claimant participated in the hearing. The employer participated through owner Matt Timmerman. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant failed to contact the temporary employment agency within three working days after the completion of his assignment when notified of this requirement at the time of hire.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a temporary laborer on July 24, 2008. At the time of hire, the claimant signed an availability statement that advised him of the requirement to check in after the completion of an assignment. The employer requires employees to call in within three working days after an assignment ends. The claimant was not given a copy of the availability statement.

The claimant's last assignment ended on July 31, August 7, or August 10, 2009. He testified he did check in with the employer after the completion of his last assignment. The employer testified the claimant did not check in for additional work, but the employer was unable to unequivocally provide the date of his last assignment.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a. The employer herein is a temporary employment agency and temporary employment agencies are governed by Iowa Code § 96.5-1-j, which places specific restrictions on both the employer and the employee with regard to qualification for unemployment insurance benefits after a voluntary separation.

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.

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.

The claimant testified he contacted the employer within three days after the completion of his last assignment. Neither party could accurately provide that date, though. More importantly, the employer has not acted in compliance with Iowa Code § 96.5-1-j. The notification documentation was not provided for the hearing and, therefore, its contents cannot be verified. The employer did admit the claimant was not given a copy of the notification document as

required. Since the employer did not satisfy the requirements of Iowa Code § 96.5-1-j, the claimant's separation from the employer is with good cause attributable to the employer. Benefits are allowed.

DECISION:

The unemployment insurance decision dated March 18, 2009, reference 05, is reversed. The claimant voluntarily quit his employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw