

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERICA R BERRY
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 20A-UI-03720-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.6(2) - Timeliness of Appeal

STATEMENT OF THE CASE:

On May 5, 2020, the claimant filed an appeal from the April 10, 2020, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on May 22, 2020. Claimant participated. Employer was not available at the number it provided for the hearing and did not participate. Department Exhibit 1 was received. Claimant's Exhibit A was received.

ISSUES:

Is the appeal timely?

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On April 10, 2020, Iowa Workforce Development mailed a reference 01 unemployment insurance decision denying benefits to claimant's last address of record. The decision listed an appeal deadline of April 20, 2020. Claimant received the decision within the appeal deadline. Claimant is also self-employed, so she was unsure whether she should file an appeal or file for Pandemic Unemployment Assistance (PUA) as a self-employed worker. Claimant tried contacting Iowa Workforce Development numerous times at its toll-free number, but was unable to get in contact with anyone. Claimant applied for PUA as a self-employed worker prior to the appeal deadline. After not hearing anything in response to her PUA application, claimant continued to try to get in contact with Iowa Workforce Development. Finally, on approximately May 5, 2020, claimant got into contact with an IWD employee who advised her to appeal the reference 01 decision. Claimant did so the same day.

Employer is a temporary-to-hire staffing firm. Claimant began working for employer's client, Hodge, in August 2019 as a full-time forklift driver. Claimant was separated from employment on January 13, 2020, when the client ended the assignment due to attendance issues.

Claimant was absent on January 10, 2020, because her grandmother was in the hospital. Claimant properly notified employer of her absence. Although Hodge had an attendance policy, claimant had never been previously disciplined for attendance.

Claimant did not request another assignment from employer because she was not advised of any policy that would require her to do so.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides, in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

In this case, the appeal was filed late due to untimely advice from IWD. Claimant received the decision in a timely manner and knew she needed to take action. She just did not know what action to take. Claimant's assertion she was not able to get in contact with an IWD employee for advice is credible, given the administrative law judge's knowledge of the call volume on the customer service line at that time. Claimant did act timely by filing a PUA application prior to the appeal deadline. When claimant was finally able to reach an IWD employee and was advised to file an appeal, she did so almost immediately thereafter. The delay in filing a timely appeal was prompted by and perpetuated by the agency. See, Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant was separated from employment with good cause attributable to employer.

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.

Iowa Admin. Code 871—24.26(15) provides:

The following are reasons for a claimant leaving employment with good cause attributable to the employer:

Employee of temporary employment firm.

- a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.
- b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.
- c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.
- d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

In this case, claimant was not advised in writing that she was required to notify employer within three working days of the assignment ending that she was seeking reassignment. Therefore, claimant's separation is with good cause attributable to employer.

DECISION:

The April 10, 2020, (reference 01) unemployment insurance decision is reversed. The appeal is timely. The claimant was separated from employment with good cause attributable to employer. Benefits are allowed, provided claimant is otherwise eligible.



Christine A. Louis
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May 28, 2020
Decision Dated and Mailed

cal/scn