

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENNIS J HEIN
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 21A-UI-16460-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/11/21
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

Dennis J Hein., the claimant/appellant, filed an appeal from the July 19, 2021, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on September 17, 2021. Mr. Hein participated and testified. Tracey Watkins, Mr. Hein’s supervisor at Mallard Group, testified on Mr. Hein’s behalf. The employer did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative record.

ISSUE:

Did Mr. Hein quit by not reporting for an additional work assignment within three business days of the end of the last assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Hein. began working for the employer in 2019. He worked as a part-time cleaner on assignment to Mallard Group. He cleaned the Grand River Medical Group.

From mid-April 2020 through September 2020, Mallard Group reduced Mr. Hein’s hours. By September 15, 2020, Mallard Group had reduced Mr. Hein’s hours to zero hours per. The hours Mr. Hein had been scheduled were given to Mallard Group regular employee.

Grand River Medical Group’s policy required Mr. Hein to wear a face mask due to the COVID-19 pandemic. Mr. Hein is diagnosed with Chronic Obstructive Pulmonary Disease (COPD). Mr. Hein told Ms. Watkins, his supervisor at Mallard Group that he could not wear a mask for long periods of time because wearing a masking made it difficult for him to breathe. Ms. Watkins told Mr. Hein that he was required to wear a mask.

Mr. Hein and Ms. Watkins discussed further and Ms. Watkins put Mr. Hein on Mallard Group’s “ongoing list” as of about September 15, 2020. Being on the “ongoing list” meant that Mallard

Group would contact the employer, Express Services Inc, if they had work available and Express would contact Mr. Hein to offer the work. Ms. Watkins called Express and told them that Mr. Hein was on Mallard Group's "ongoing list."

On, or about October 21, the employer contacted Ms. Watkins to ask if Mr. Hein's assignment with Mallard Group was over. Ms. Watkins told the employer that Mr. Hein was still on Mallard Group's "ongoing list."

At some later date, Ms. Watkins contacted Express to let them know that Mallard Group had work available, and asked that Mr. Hein accept the job. The job required employees to wear a mask. Mr. Hein chose not to come back because of the face mask requirement. Mr. Hein remained on Mallard Group's "ongoing list." Mr. Hein did not contact the employer because he was on Mallard Group's "ongoing list" and hoped to return to the assignment when masks were not required.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Hein's separation from the employment was without good cause attributable to the employer.

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. (1) 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.

(2) 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.

(3) For the purposes of this lettered paragraph:

(a) "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.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(15) 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:

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.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The plain language of the statute allows benefits for a claimant "who notifies the temporary employment firm of completion of an assignment *and* who seeks reassignment."

In this case, Mr. Hein's assignment ended with Mallard Group when they stopped offering him hours, and when they put him on the "ongoing list," which essentially meant the Mallard Group would contact Express, Mr. Hein's employer, when they needed him. Mr. Hein did not notify the employer of his availability, or request another assignment when his assignment was over at Mallard Group. Therefore, Mr. Hein is considered to have quit employment without good cause attributable to the employer. Benefits are denied.

DECISION:

The July 19, 2021, (reference 02) unemployment insurance decision is affirmed. Mr. Hein is considered to have voluntarily quit without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided she is otherwise eligible.



Daniel Zeno
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September 23, 2021
Decision Dated and Mailed

dz/mh