

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK SERVANTEZ

Claimant

APPEAL NO. 07A-UI-08380-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC

Employer

**OC: 07/22/07 R: 02
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Express Services, Inc. (employer) appealed an unemployment insurance decision dated August 27, 2007, reference 01, which held that Mark Servantez (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 18, 2007. The claimant participated in the hearing. The employer participated through staffing consultants Andre Smith and Carrie Gansen. 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's voluntary separation from employment qualifies him to receive unemployment insurance benefits..

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed for this temporary employment agency intermittently since July 14, 2007. His last assignment was with Sunnyfresh and he was working full-time hours as a general laborer. Sunnyfresh notified the employer on July 19, 2007 that the claimant's assignment was completed and the employer notified the claimant. The claimant was upset that he was taken off work at Sunnyfresh. He went into the office on July 20, 2007 to pick up his paycheck. The employer had another position for the claimant at Wood Harbor but the claimant refused to take a math test to see if he could qualify for the position. He said he had too much to do since he was moving into a new house. He never checked back in for a reassignment but did go back for a second paycheck. When the employer asked him about his availability, he said it would be another three weeks since he was still moving.

The claimant filed a claim for unemployment insurance benefits effective July 22, 2007 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by telling the employer he was too busy moving to accept another assignment. He originally testified that he did not call the employer for an additional assignment because he was looking for work elsewhere. He later changed that testimony to say that he did check back in when he picked up another check and told Carrie Gansen that he was available for work. Ms. Gansen was called to testify and she testified that the claimant did come in for an additional check but said that he was still busy moving and believed he would be available in another three weeks.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

Iowa Code § 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated August 27, 2007, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his

weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,880.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css