

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**GORDON PLUMMER**  
Claimant

**EXPRESS SERVICES INC**  
Employer

**APPEAL NO. 14A-UI-03764-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/09/14**  
**Claimant: Respondent (2)**

Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Express Services, Inc. (employer) appealed an unemployment insurance decision dated April 1, 2014, (reference 01), which held that Gordon Plummer (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 April 29, 2014. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Jim Cole, Staffing Consultant.

**ISSUES:**

The issues are whether the claimant is disqualified benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment agency and the claimant was hired as a temporary general laborer on February 2, 2012. At the time of hire, he signed the End of Assignment Reporting Requirements document, which advised him of the requirement to check in for additional work after the completion of an assignment. The employer requires employees to check in within three working days after an assignment ends to provide the employer notification of the claimant's availability and failure to do so would be considered as a voluntary quit. The claimant was given a copy of the End of Assignment Reporting Requirements document, which is not part of the application or contract of employment.

The claimant's most recent assignment with A-Line Iron and Metals began on July 31, 2013. This was a long-term, temp-to-hire position but the contract employer was not satisfied with the claimant's performance. He would start out great but his performance rapidly declined after that. The contract employer requested the claimant be removed from the assignment and the employer advised him his assignment was over on February 4, 2014.

The claimant checked back in for additional work and accepted an assignment that was scheduled to begin on February 28, 2014 at Gallagher-Blue Dorn – Performing Arts Center. He called and cancelled on February 25, 2014. The employer offered the claimant another assignment at the UNI Sports Uni-Dome to help set up for a concert and the claimant accepted. The assignment was scheduled to begin on March 3, 2014, but the claimant was a no-call/no-show. He did not call or check in with the employer within three days and was considered to have voluntarily quit effective March 6, 2014. The claimant did contact the employer on March 10, 2014, and stated he had been out of town.

The claimant filed a claim for unemployment insurance benefits effective March 9, 2014, and has received benefits after the separation from employment in the amount of \$906.00. Staffing Consultant Jim Cole participated in the fact-finding interview on behalf of the employer.

### **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. Iowa Code § 96.5-1. 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 unemployment insurance benefits.

To be disqualified from receiving benefits, at the time of hire the employer must advise the individual in writing of the three-day notification rule and the employer did so in this case. The employer must also notify the individual that he may be disqualified from receiving unemployment insurance benefits if he fails to notify the employer. Iowa Code § 96.5-1-j. The claimant was given a copy of the End of Assignment Reporting Requirements document, which advised him that failure to contact the employer after the end of an assignment could result in a loss of unemployment benefits.

The claimant failed to call or report for an assignment he accepted on March 3, 2014. He knew or should have known he was required to contact the employer within three days of his last work assignment so the employer knew whether he was available for additional assignments. In the case herein, the claimant did not complete his assignment but failed to contact the employer within three days of his last scheduled assignment. He has not established good cause for his failure to do so. The claimant did not satisfy the requirements of Iowa Code § 96.5-1-j and is disqualified from receiving unemployment insurance benefits.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received benefits in the amount of \$906.00 as a result of this claim. A waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount.

**DECISION:**

The unemployment insurance decision dated April 1, 2014, (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 \$906.00 in unemployment benefits.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs