

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL E MARLATT
Claimant

APPEAL NO. 08A-UI-00369-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

**OC: 07/08/07 R: 04
Claimant: Appellant (2)**

Section 96.5(1)j – Quit/Temporary
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Michael Marlatt, filed an appeal from a decision dated January 4, 2008, reference 07. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 28, 2008. The claimant participated on his own behalf. The employer, Express Services, participated by Sales Representative Lisa Anderson.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer and whether he is able and available for work.

FINDINGS OF FACT:

Michael Marlatt was employed by Express Services from August 14 until October 31, 2007. He was assigned during that time as a general laborer at Bradley Ironworks. The claimant suffered cardiac problems and contacted Owner Mike Schaul to ask if he would be able to go part time, or have light duty, at the client company. The employer suggested he talk directly with Mike Bradley, Owner of Bradley Ironworks. Mr. Bradley stated he did not have part time or light duty available.

Mr. Marlatt contacted Mr. Schaul and stated he would not be able to return to Bradley Ironworks because of his physical condition, but asked if Express Services could find him part-time or light-duty work. Mr. Schaul said his office served the industrial business community and the chances of finding part-time or light-duty work for a temporary employee was very slight.

The claimant currently can work eight hour days, but only if the job has “minimal lifting.” He has experience in human resources management and as a district manager for several businesses, along with business education.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant had to end his current assignment because of medical problems beyond his control. The client company had no work available to him with his physical restrictions. He did contact the temporary agency to ask for another assignment but none was available within his restrictions. Under the provisions of the above Administrative Code section, this is not a voluntary quit without good cause attributable to the employer and the claimant is qualified for benefits.

Iowa Code section 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.

The claimant has established he is able to work full-time within the limits of his physical restrictions and he has the necessary education and work experience to qualify for jobs within that criteria.

DECISION:

The representative's decision of January 4, 2008, reference 07, is reversed. Michael Marlatt is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css