

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARREN R WARNKE**  
Claimant

**APPEAL NO. 09-UI-04740-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 02/08/09**  
**Claimant: Respondent (1)**

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment  
Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 20, 2009, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on April 22, 2009. Claimant Darren Warnke did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Julie Augsperger, Staffing Consultant, represented the employer.

**ISSUES:**

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

Whether the claimant met the work availability requirements of Iowa Code section 96.4(3) at the time he established his claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Darren Warnke established his employment relationship with Express Services on November 20, 2008. Express Services placed Mr. Warnke in a part-time on-call snow removal position with A Plus Lawn and Landscape on December 1, 2008. A Plus would contact Mr. Warnke directly when it needed his services. Mr. Warnke never declined A Plus's request that he assist with snow removal. Express Services considered the work one ongoing assignment. A Plus last contacted Mr. Warnke to work at the beginning of February 2009. Neither A Plus nor Express Services told Mr. Warnke that the assignment was ending. After the last bit of work at the beginning of February, A Plus just never called Mr. Warnke back to request his services. Mr. Warnke's last contact with Express Services was on February 13, 2009, when he collected his most recent check.

On November 20, 2008, Express Services had Mr. Warnke sign an end-of-assignment notification policy. The policy obligated Mr. Warnke to contact Express Services within three

days of the end of the assignment. The policy was set forth on a document separate from other policies or work rules. Mr. Warnke signed the policy and received a copy of the policy.

Mr. Warnke established a claim for benefits that was effective February 8, 2009. Mr. Warnke received \$290.00 in benefits for the week ending February 14 and for the week ending February 21. Mr. Warnke's then discontinued his claim.

## **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.

871 IAC 24.26(19) 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:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The evidence in the record indicates that the employer had an end-of-assignment notification policy that complied with the requirements of the statute. The employer complied with the statute by having Mr. Warnke sign the policy and by giving Mr. Warnke a copy of the policy. The evidence fails to establish how it would have been possible for Mr. Warnke to comply with the three-day notice requirement, given the nature of the on-call, ongoing assignment. By the time Mr. Warnke would have figured out that the assignment had ended--after perhaps weeks of not being contacted by A Plus to perform snow removal work--the three-day notice period would undoubtedly have run. Given the apparent impossibility of complying with the end-of-assignment notification requirement, it would be a miscarriage of justice to mechanically apply the statute to Mr. Warnke's employment situation. The administrative law judge concludes that Mr. Warnke did not voluntarily separate from the assignment or from Express Services and that the separation was for good cause attributable to the employer. Mr. Warnke is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Warnke.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since,

under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence indicates that Mr. Warnke was available for the part-time, on-call work, but that A Plus no longer used his services after the first of February. At that point, Mr. Warnke was no longer performing work under the same conditions in place from the start of the assignment. The administrative law judge concludes that Mr. Warnke met the work availability requirements at the time he established his claim for benefits and was eligible for benefits, provided he was otherwise eligible.

**DECISION:**

The Agency representative's March 20, 2009, reference 03, decision is affirmed. The claimant's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant met the work availability requirements of Iowa Code section 96.4(3) at the time he established his claim for benefits. The claimant was eligible for benefits, provided he was otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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