

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**MARK E MCFALL**  
Claimant

**APPEAL NO: 19A-UI-03481-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 03/24/19  
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 18, 2019, (reference 01) unemployment insurance decision that denied benefits based upon his separation with this employer. The parties were properly notified about the hearing. A telephone hearing was held on May 15, 2019. The claimant did not participate. His sister, Joanne Caligiuri, participated on his behalf and as his representative. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Claimant Exhibit A (Appeal letter) was admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was last assigned at LGSTX from 2015 to September 30, 2018. After the assignment ended, the claimant failed to report to the employer within forty-eight hours and request further assignment as required by written policy. (Joanne Caligiuri testimony). The claimant checked in for work and requested a new assignment the next month when he brought in a resume.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce 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.

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 employment assignment *and* who seeks reassignment." (Emphasis supplied.)

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age,

intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* The claimant in this case did not attend the hearing and instead appointed his sister to speak on his behalf. Her evidence was based solely on the claimant's communications to her, and she acknowledged he did not comply with the employer's written policy for reassignment. There was no additional evidence from either party to evaluate.

Assessing the credibility of the witness and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the claimant failed to establish his separation was non-disqualifying, after he failed to report and request a new assignment as outlined in the employer's policy.

In this case, the claimant did not notify the employer of his availability or request another assignment per employer policy, and, therefore, is considered to have quit the employment, even though he may have returned to work for the temporary agency at some later date. Benefits are denied.

**DECISION:**

The April 18, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant's separation was not attributable to the employer. Benefits are withheld until such time as he works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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