

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

CHELSEY L CRAVEN
Claimant

APPEAL 23A-UI-01964-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

**OC: 05/15/22
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)J – VQ – Temporary employment firm
Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 21, 2023, (reference 04) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 14, 2023. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate. The administrative law judge took official notice of the administrative record.

ISSUE:

Whether claimant's separation was a voluntary quit without good cause attributable to employer.
Whether claimant was laid off due to a lack of work.
Whether claimant made a timely request for another job assignment.

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant was employed full-time by Express Services Inc., a temporary employment firm, from August 1, 2022, until her employment ended on January 6, 2023. Claimant's most recent assignment was as a parts-finder at Woodhouse Chevrolet. On January 6, 2023, employer called and informed claimant that her assignment had ended.

Claimant never received a written policy requiring her to request a new assignment within three working days of completing an assignment nor was claimant ever informed of any such policy. Nevertheless, on Monday, January 9, 2023, claimant called the employer and requested a new assignment. Employer informed claimant that there were no assignments currently available. Claimant maintained regular contact with the employer checking-in on potential assignments throughout the month of January, but nothing was available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Iowa Admin. Code r. 871-24.1 provides:

Definitions.

Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(113) Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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.

In this case, claimant completed her assignment at Woodhouse Chevrolet on January 6, 2023. Although claimant was never advised in writing of a duty to request a new assignment within three working days of completing an assignment, on January 9, 2023, claimant contacted employer and requested a new assignment, but no assignments were available. As such, the evidence fails to show claimant voluntarily quit her employment, as there is no evidence claimant intended to sever the employment relationship or committed an overt act carrying out such intention. *See Local Lodge # 1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Rather, claimant's separation was initiated by employer and was attributable to a lack of work. Accordingly, benefits are allowed.

DECISION:

The February 21, 2023, (reference 04) unemployment insurance decision is reversed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.



Patrick B. Thomas
Administrative Law Judge

March 15, 2023
Decision Dated and Mailed

pbt/mh

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.