

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY MANDERS

Claimant

APPEAL NO: 13A-UI-05427-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC

Employer

OC: 09/23/12

Claimant: Respondent (2/R)

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 May 2, 2013, reference 02, which held that Gary Manders (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 June 12, 2013. The claimant participated in the hearing. The employer participated through Valerie Hefel. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the claimant's voluntary separation from employment is disqualifying.

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 on January 8, 2013. At the time of hire, he signed an availability statement 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 availability statement, which is not part of the application or contract of employment.

The claimant voluntarily quit on February 14, 2013 because he had to go out of state for personal business. He did not return to the state for approximately 45 days.

The claimant filed a claim for unemployment insurance benefits effective September 23, 2012 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He 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 claimant voluntarily quit on February 14, 2013 for personal reasons. These reasons were unrelated to the employer and his separation was without good cause attributable to the employer. The claimant failed to meet his burden and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated May 2, 2013, reference 02, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css