

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN TINGWALD

Claimant

APPEAL NO. 11A-UI-06393-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC

Employer

OC: 03/28/10

Claimant: Appellant (2)

Iowa Code § 96.5-1-j - Voluntary Quit of Temporary Employment

STATEMENT OF THE CASE:

Justin Tingwald (claimant) appealed an unemployment insurance decision dated May 4, 2011, reference 03, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Express Services, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 8, 2011. The claimant participated in the hearing with Attorney Robert Tully. The employer participated through Aaron Jones, branch manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is disqualified for failure to contact the temporary employment agency within three working days after the completion of his assignment, when and if notified of this requirement at the time of hire.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a temporary general laborer on June 3, 2010. At the time of hire, the claimant was advised that he was required to speak with the employer 48 hours prior to ending an assignment on his or her own. Otherwise, when an assignment is completed, employees are required to call the employer on a weekly basis if they want additional work. The claimant denied he was aware of any notification requirements.

The claimant's assignment ended on June 18, 2010 and the employer notified him of that fact. He went in to the office to retrieve his paycheck from the previous week and the employer told him they would contact him if they had more work. The claimant went to the office on June 25, 2011 to pick up a second paycheck and was advised of the same information. He never called the employer because he was told the employer would call him if they had work.

The employer witness offered hearsay evidence that the claimant was offered a job on June 21, 2011 but he declined it. The claimant denied receiving a call from the employer on that day.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a. The employer herein is a temporary employment agency and temporary employment agencies are governed by Iowa Code § 96.5-1-j, which places specific restrictions on both the employer and the employee with regard to qualification for unemployment insurance benefits after a voluntary separation.

An individual who is a temporary employee of a temporary employment firm may be disqualified from receiving unemployment insurance benefits if the individual does not notify the temporary employment firm within three working days after ending a job assignment in an attempt to obtain another job assignment. To be disqualified from receiving benefits, at the time of hire the employer must advise the individual in writing of the three-day notification rule. The employer must also notify the individual that he may be disqualified from receiving unemployment insurance benefits if he fails to notify the employer. Iowa Code § 96.5-1-j.

In the case herein, the employer's end-of-assignment notification policy does not satisfy the requirements of Iowa Code § 96.5-1-j. The claimant denies being told any of any notification requirements and he was twice advised after the end of his assignment that the employer would call him if they had any work so he never bothered calling them.

The employer testified its employees are required to notify the employer within 48 hours of the completion of an assignment, but the notification document was not provided for the hearing and, therefore, its contents cannot be verified. However, even relying on the employer's testimony, its notification policy does not satisfy the requirements of Iowa Code § 96.5-1-j. So, while it is clear that the claimant made no effort to actually find work, his separation is not disqualifying and benefits are allowed.

DECISION:

The unemployment insurance decision dated May 4, 2011, reference 03, is reversed. The claimant voluntarily quit his employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw