

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAUREEN J MEADE
Claimant

APPEAL NO. 14A-UI-12024-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 05/04/14
Claimant: Respondent (1)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 10, 2014, reference 02, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant October 1, 2014 separation from the temporary employment firm was for good cause attributable to the employer. After due notice was issued, a hearing was held on December 10, 2014. Claimant participated. Brandy Wittenbaugh represented the employer. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant and took official notice of the fact-finding materials for the purposes of determining whether the employer participated in the fact-finding interview and whether the claimant engaged in fraud or dishonesty in connection with the fact-finding interview.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Express Services, Inc., is a temporary employment agency. The claimant last performed work for the employer in a part-time, temp-to-hire work assignment at started in July 2014 and that ended on October 1, 2014, when the client business ended the assignment due to attendance. Ms. Meade was late getting to work on October 1 and that absence triggered the client business's decision to end the assignment. Ms. Meade immediately notified Express Services that the client business had ended the assignment. Ms. Meade did not ask for another assignment and the employer did not raise the issue. Ms. Mead next had contact with the employer on November 13, 2014 to notify the employer that she had found other employment.

The employer has an end-of-assignment notification requirement. The employer included a statement of that requirement in the employee handbook that the employer provided to Ms. Meade. The employer also set forth the requirement in a separate document that the employer had Ms. Meade sign. The employer did not give Ms. Meade a copy of that separate

policy document that contained only the end-of-assignment notification requirement. That separate statement required that employees contact the employer within three working days of the end of an assignment or be deemed to have voluntarily quit the assignment. The policy statement omitted any reference to potential unemployment insurance consequences as a result of not making the required contact.

REASONING AND CONCLUSIONS OF LAW:

The employer presented insufficient evidence to establish that the discharge from the assignment was for misconduct in connection with the employment. The evidence indicated a single unexcused absence, which would not be sufficient to establish excessive unexcused absences under Iowa Administrative Code section 871-24.32(7).

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.

Iowa Admin. Code r. 871-24.26(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 employer's end-of-assignment policy and its procedure in sharing that with Ms. Meade did not comply with the requirements set forth in Iowa Code section 96.5(1)(j). The statement in the handbook did not comply with the requirement of a separate policy document containing the end of assignment statement. The employer's separate policy document did not comply with the requirements of the statute because it did not warn of unemployment insurance consequences if the employee failed to make the required contact. The employer failed to comply with the statutory requirement that the employer provide Ms. Meade with a copy of the separate policy statement the employer had Ms. Meade sign. For all these reasons, the employer cannot claim the benefit of Iowa Code section 96.5(1)(j) and Ms. Meade's obligation to the employer ended on October 1, 2014, when she completed the assignment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Meade's October 1, 2014 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Ms. Meade is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The November 10, 2014, reference 02, decision is affirmed. The claimant's October 1, 2014 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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