

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARIUS M DAYE

Claimant

APPEAL NO. 12A-UI-14254-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC

Employer

OC: 10/07/12

Claimant: Respondent (5)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 27, 2012, reference 01, decision that allowed benefits in connection with a September 14, 2012 separation. After due notice was issued, a hearing was held on January 8, 2013. Claimant Darius Daye provided a telephone for the hearing, but was not available at that number at the time of the hearing and did not participate. Erin Johnston, Director of Operations, represented the employer. Exhibits A and B were received into evidence.

ISSUE:

Whether the claimant's September 2012 separation from the temporary employment agency was for good cause attributable to the employer. It was.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Darius Daye commenced getting work assignments through Express Employment Professionals in January 2012. Mr. Daye's most recent assignment with the employer was a full-time temporary work assignment at Anderson Windows. Mr. Daye started the assignment in May 2012 and completed the assignment on September 12, 2012, when Anderson Windows no longer had need of his services. Erin Johnston, Director of Operations at the Express Employment Professionals Des Moines branch, left a voice mail message for Mr. Daye on September 12, 2012 to notify him that the assignment was ended. Express Employment Professionals did not have further contact with Mr. Daye.

In January 2012, the employer had Mr. Daye sign two documents that referred to his obligation to contact the employer upon completion of a work assignment. One of those documents was a full-page Handbook Receipt that contained many different policy provisions in addition to the end-of-assignment reporting requirement. The second document the employer had Mr. Daye sign was captioned End-of-Assignment Reporting Requirements. The second document contained a clear and concise statement of Mr. Daye's obligation to contact the employer within three working days of the end of an assignment or be deemed to have voluntarily quit. The document indicated a further requirement that Mr. Daye contact the employer weekly to indicate

he was available for work. The document did not refer to the consequences to Mr. Daye's unemployment insurance benefit eligibility if he failed to make timely contact with the employer at the end of an assignment. The employer did not provide Mr. Daye with a copy of either document.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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 evidence establishes a September 12, 2012 separation that was for good cause attributable to the employer. Mr. Daye completed the work assignment on September 12, 2012. The Handbook Receipt he signed did not comply with the requirements of Iowa Code section 96.5(1)(j), which required a separate document containing the end-of-assignment reporting requirement. The End-of-Assignment Reporting Requirements document comes closer to complying with the statute, but contains a significant defect. The document makes no reference to the consequences to Mr. Daye's unemployment insurance benefit eligibility if he failed to contact the employer at the end of an assignment. Thus, neither document complies with the requirements of the statute. In addition, the employer did not provide Mr. Daye with a copy of either document despite the statutory requirement that the employer provide the claimant with a copy of the policy statement he signed. The employer cannot claim the benefit of Iowa Code section 96.5(1)(j). Instead, Mr. Daye fulfilled his contract of hire when he completed the assignment on September 12, 2012 and was under no obligation to seek further work through the employer. Because the separation was for good cause attributable to the employer, Mr. Daye is eligible for benefits provided he is otherwise eligible. The employer's account may be charged.

DECISION:

The Agency representative's November 27, 2012, reference 01 decision is modified as follows. The claimant completed the contract of hire on September 12, 2012. The claimant's September 12, 2012 separation from the employer was for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/tll