

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK A JORDAN
Claimant

APPEAL NO. 09A-UI-15089-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 08/30/09
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Mark Jordan filed a timely appeal from the September 30, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 9, 2009. Mr. Jordan participated. Holly Burtness, Staffing Consultant, represented the employer.

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: Mark Jordan's contact with Express Services, Inc., began on May 21, 2009, after IMT indicated it had work for him and directed him to contact Express Services. IMT required that Mr. Jordan begin his work for that company as a temporary employee for one month, during which time he would be an Express Services employee. During the application and interview process at Express Services, that company had Mr. Jordan execute an end-of-assignment notice policy. That policy obligated Mr. Jordan to contact Express Services within three working days of the end of his work assignment. The policy went beyond that and told Mr. Jordan he had to maintain weekly contact with Express Services after the assignment ended.

Mr. Jordan started performing work for IMT. By mid-June, IMT was interested in hiring Mr. Jordan and ending his temporary work assignment through Express Services. IMT sent Mr. Jordan for various tests. When it came time for the physical/lifting test, Mr. Jordan was asked whether he had a prior back injury. Mr. Jordan indicated that he had a prior injury, but had been released to return to work a year earlier. IMT ultimately rescinded its offer of employment and ended Mr. Jordan's work assignment on June 17, 2009.

On June 17, Mr. Jordan reported to Express Services to advise his work assignment had ended. Express Services did not have a new assignment for Mr. Jordan at that time. Mr. Jordan returned that Friday to collect his check. Mr. Jordan had some contact with Express Services during the following week, but eventually terminated contact with Express Services.

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.

In order to comply with the notice requirement of the statute, the three-day notice requirement must be the only policy set forth on the document signed by the employee and given to the employee. Here, the employer added an additional contact requirement. The end-of-assignment policy did not comply with the statute and cannot serve as a basis for disqualifying Mr. Jordan for unemployment insurance benefits. Even if the policy had complied with the statute, the evidence indicates that Mr. Jordan was in immediate contact with the temporary employment agency on the same day his assignment ended to make the employer aware he was available for a new assignment. The statute requires nothing further and does not require the weekly contact the employer imposed.

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

DECISION:

The Agency representative's September 30, 2009, reference 01, decision is reversed. The claimant's 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

jet/pjs