

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARVEE J SMITH
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 18A-UI-05198-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/08/18
Claimant: Appellant (1)

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

Marvee J. Smith (claimant) filed an appeal from the May 1, 2018, reference 01, unemployment insurance decision that denied benefits based upon the determination he voluntarily quit employment with Express Services, Inc. (employer) when he missed work for three consecutive days without notice to the employer. The parties were properly notified about the hearing. A telephone hearing was held on May 23, 2018. The claimant participated. The employer participated through Recruiting Specialist Olivia Watson. The Employer's Exhibit 1 was admitted into the record without objection.

ISSUE:

Did the claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began employment with the employer as a temporary employee beginning on October 13, 2017. He was most recently employed in a temporary full-time position as a Material Handler for the employer's client Fleck beginning on April 6, 2017, which was also his only day worked at the assignment. When the claimant left work that day, he asked the Fleck employee if he should return on Monday. The Fleck employee told him to contact the employer.

On Monday, April 9, 2018, the claimant left a voice message for the employer stating he would not be at work that day due to a lack of transportation and childcare. The claimant did not contact the employer after that time. On April 19, 2018, Recruiting Specialist Olivia Watson attempted to contact the claimant via telephone, text message, and email regarding an overpayment and asking him to contact her. The claimant did not respond to Watson's messages.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer. Benefits are denied.

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. (1) 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.

(2) 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.

(3) For the purposes of this lettered paragraph:

(a) "*Temporary employee*" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "*Temporary employment firm*" means a person engaged in the business of employing temporary employees.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The plain language of the statute allows benefits for a claimant "who notifies the temporary employment firm of completion of an assignment *and* who seeks reassignment." (Emphasis supplied.)

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all,

part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events. The employer was able to provide specific details about notes made in its system which are kept in the normal course of business. The claimant was unable to provide details about the contacts he allegedly made, specifically with whom he spoke.

Accepting the claimant's assignment ended on April 6, the claimant contacted the employer on April 9, to notify it that he was not available for work. He did not contact the employer after that date notifying it that the assignment had ended and requesting another assignment. Therefore, he is considered to have quit the employment without good cause attributable to the employer.

DECISION:

The May 1, 2018, reference 01, unemployment insurance decision is affirmed. The claimant's separation was not attributable to the employer. Benefits are withheld until such time as he works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn