

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEAN R WELCH
Claimant

APPEAL NO. 14A-UI-00838-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 08/11/13
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Jean Welch filed a timely appeal from the January 16, 2014, reference 01, decision that disqualified her for benefits in connection with a December 13, 2013 separation from the employer. After due notice was issued, a hearing was held on February 13, 2014. Ms. Welch participated. Valerie Hefel represented the employer. Exhibits One, Two, A and B were received into evidence.

ISSUE:

Whether the claimant's December 2013 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. In September 2013, Jean Welch started a full-time, temporary work assignment at Honkamp Krueger. The work hours were 8:00 a.m. to 4:30 a.m., Monday through Friday. Ms. Welch completed the assignment on December 13, 2013, when she performed all the work the client business had for her. On December 12, 2013, Mr. Welch emailed Express Services, Inc., to notify the employer that her assignment was coming to an end the next day. Ms. Welch stated in that email that she was looking for another assignment. On that same day, Ms. Welch stopped at the employer's office and conveyed the same information to a receptionist. On December 15, 2013, Ms. Welch sent another email to Express Services, restating that the assignment had ended on December 13, 2013. Ms. Welch did not repeat in the December 15, 2013 email that she was looking for another assignment. Ms. Welch's next contact with the employer was on January 6, 2014, when she stopped into the employer's office to indicate that she was available for work.

The employer has a written End-of-Assignment Reporting Requirements document that the employer had Ms. Welch sign on September 11, 2013. The employer did not provide Ms. Welch with a copy of the document she signed. The documents states:

I agree to call my Express Supervisor at the end of each job assignment. If I do not call within three (3) working days from the end of an assignment, Express can consider me to have voluntarily quit. To make sure that Express knows I am available for work when I am not on an assignment, I will call in at least once a week to let Express know I am available.

I understand and agree to these terms and conditions.

The policy statement said nothing about any impact on Ms. Welch's unemployment insurance benefit eligibility if she failed to make contact with the employer at the end of an assignment.

The employer had Ms. Welch sign a separate Handbook Receipt document on September 11 that contained nine paragraphs of small-font information. In the middle of the page amongst the several provisions was the following sentence: "I further understand that failure to report the end of an assignment or show up for work at an assignment without calling will be considered job abandonment and may affect my unemployment benefits."

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 employer end-of-assignment notice policy fails to comply with the requirements of Iowa Code section 96.5(1)(d). The shorter, stand-alone policy is silent with regard to any impact on Ms. Welch's unemployment insurance benefit eligibility if she failed to make timely contact with the employer at the end of an assignment. In addition, the employer did not provide Ms. Welch with a copy of that document. These defects alone are sufficient to prevent the use of the statute to render Ms. Welch ineligible for benefits. The employer's much longer, boilerplate Handbook Receipt document buries a short statement about unemployment insurance benefit eligibility amongst a full page of tiny-font policy provisions. That document also does not meet the requirements of Iowa Code section 96.5(1)(j).

Because Iowa Code section 96.5(1)(j) does not apply, Ms. Welch fulfilled her contract of hire and fulfilled her obligation to the employer when she completed her work assignment on December 13, 2013. Ms. Welch was under no further obligation to seek work with the employer. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Welch's December 13, 2013 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Ms. Welch is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The Agency representative's January 16, 2014, reference 01, decision is reversed. The claimant's December 13, 2013 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