

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARON S ENGLAND
Claimant

APPEAL NO. 16A-UI-08245-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 06/26/16
Claimant: Respondent (5)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 26, 2016, reference 02, decision that allowed benefits to the claimant, provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an agency conclusion that the claimant had separated from the employer on June 9, 2016 for good cause attributable to the employer. After due notice was issued, a hearing was held on August 16, 2016. Claimant Aaron England participated and presented additional testimony through Aaron England. Staffing Consultant Jody Korleski represented the employer.

ISSUE:

Whether the claimant separated from a work assignment or from the employer for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer of liability for benefits.

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. Aaron England performed work for Express Services in two temporary assignments. The first was a one-day assignment. After that, Mr. England performed work in a full-time, temp-to-hire assignment at Graham Manufacturing Corporation in Mason City. The Graham assignment started on April 10, 2016. Mr. England worked the overnight shift at Graham. His usual start time was 11:00 p.m., but he was sometimes required to report for overtime work at 9:00 p.m. His shift would end at 7:00 a.m. Mr. England's work week at Graham started on Sunday evening and would end on Friday or Saturday morning, depending on whether there was required overtime work. Mr. England last performed work in the Graham assignment during the shift that started on June 7 and that ended on June 8.

On June 6, Mr. England injured his back while performing his duties at Graham. Mr. England did not immediately appreciate the extent of his injury and did not immediately report the injury.

On June 8, Mr. England sought evaluation and treatment at Emergency Room for his injury. On June 8, Mr. England's wife, Saroya England, reported his injury to the Graham supervisor. Also on June 8, Saroya England left a voice mail message for Express Services regarding the injury.

On June 9, 2016, Mr. England spoke to Express Services Staffing Consultant Katie Redding regarding his work-related injury. Ms. Redding arranged for Mr. England to be evaluated by the employer's worker's compensation doctor. That doctor took Mr. England off work from the assignment at Graham. During the week of June 12-18, Ms. Redding had Mr. England perform light-duty clerical work at the Express Services office. Mr. England last performed the clerical duties on Friday, June 17, 2016.

On Monday, June 20, Mr. England had a follow up appointment with the worker's compensation doctor and the doctor released Mr. England to return to the assignment at Graham. Before Mr. England could return to the assignment, Ms. Redding notified Mr. England that the assignment was ended, allegedly for attendance. If Mr. England needed to be absent from work, Express Services policy required that he notify Express Services prior to the scheduled start of his shift. At the time of the contact on June 20, Ms. Redding told Mr. England that she would find a new assignment for him. However, Express Services provided Mr. England with no further work assignments and made no further contact with Mr. England.

When Ms. Redding notified Mr. England on June 20 that he would not be returning to the Graham assignment, she referenced an alleged no-call, no-show absence on May 31. However, Mr. England had been at work on that day. On June 20, Ms. Redding further investigated the alleged no-call, no-show absence. On June 21, Ms. Redding advised Mr. England that she had determined through contact with Graham Manufacturing that Mr. England had indeed worked his shift that day. Mr. England had been absent from work May 17-20, due to injury. On May 17, Mr. England had fallen on stairs at home as he was leaving for work. The injury required an ambulance to transport Mr. England to the Emergency Room. As Mr. England and his wife were waiting for the ambulance, Mr. England's wife called the Graham supervisor and put Mr. England on the phone with the Graham supervisor to explain the situation. Neither Mr. England nor his wife called Express Services on the evening of May 17 to report the absence for that evening. However, on the next day, Mr. England notified Express Services of his injury and provided a medical excuse that took him off work. The Express Services representative notified Mr. England that he would have to provide a medical release before he would be allowed to return to the assignment. Mr. England provided the medical release on May 25 and returned to work on that date. Mr. England had also been absent on May 10 due to illness and had properly reported that absence to Express Services.

At the start of Mr. England's employment, Express Services had him sign to acknowledge receipt of the employer's handbook. The handbook contained a requirement that Mr. England contact Express Services within 48 hours of completing a work assignment. The employer did not have Mr. England execute any other document regarding making contact with the employer at the end of a work assignment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 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.

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.

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The employer has the burden of proving the claimant is disqualified for unemployment insurance benefits. See Iowa Code section 96.6(2). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer did not present testimony from anyone with personal knowledge of Mr. England's employment or separation from the employment. The evidence in the record revealed that the employer's written record concerning the employment and separation was at best substantially incomplete. The weight of the evidence indicates a high degree of interpretation of that record by the employer's witness and that the interpretation was incorrect on material points. On the other hand, Mr. England and Mrs. England testified from personal knowledge and testified credibly concerning the events leading to the separation from the employment.

The evidence establishes that Mr. England was involuntarily separated from the work assignment at Graham Manufacturing Corporation due to injury, not due to attendance or any other misconduct. The evidence establishes that the employer temporarily offered an alternative light-duty assignment at the Express Services office through June 17, 2016. The evidence establishes that Mr. England was released to return to the Graham assignment effective June 20, 2016, but that Express Services and/or Graham elected not to have him return to the assignment. At that time, Mr. England involuntarily separated from Express Services with a promise from the employer that the employer would find him a new assignment. Though the employer had not complied with the requirements of Iowa Code section 96.5(1)(j) and therefore cannot rely on that statute, the evidence indicates that Mr. England was in immediate discussion with the employer regarding an additional assignment at the time the employer notified him he would not be allowed to return to Graham. Mr. England completed all of the work the employer had for him and thereby fulfilled his contract of hire. The separation from Express Services was for good cause attributable to the employer. Mr. England is eligible for benefits provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The July 26, 2016, reference 02, decision is modified to correct the separation date to June 20, 2016. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs