

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIMBERELY A TOWNSEND
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 20A-UI-01131-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/22/19
Claimant: Respondent (1)

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the February 3, 2020 (reference 07) unemployment insurance decision that allowed benefits to the claimant based upon her separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on February 24, 2020. The claimant, Kimberly A. Townsend, did not participate. The employer, Express Services Inc., participated through witness Carrie Cannon. The administrative law judge took official notice of the claimant's administrative records, including the fact-finding interview.

ISSUES:

Did the claimant voluntarily quit by not reporting for an additional work assignment within three business days of the end of the last assignment?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was a temporary employee of a temporary employment firm. She was placed into a full-time temp to hire position at Berry Plastics beginning December 13, 2019. Her job title was utility worker and she worked the day shift.

She signed the employer's handbook receipt on July 27, 2018. See fact-finding documents. The handbook receipt states that "I understand that my compensation from Express shall be limited to the duration of any temporary assignment hereunder." See fact-finding documents.

Claimant decided to quit her job assignment and notified this employer that she was quitting the job assignment at Berry Plastics on December 30, 2019. She told the employer she was quitting this assignment because she felt discriminated against. Claimant marked herself as available and requested an additional job assignment on January 3, 2020. The employer's

office was closed early on December 31, 2019 and closed all day on January 1, 2020 due to the New Year holiday. The employer had no further work available for the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the separation was not disqualifying. Benefits are allowed, provided the claimant is otherwise eligible.

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.

(emphasis added).

Iowa Admin. Code r. 871-24.26(15) provides:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual has good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently acceptable means of communications. Working days means the normal days in which the employer is open for business.

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" within three working days within the completion of the assignment. Since she contacted the employer on January 3, 2020, which was within three working days of the completion of the assignment (due to the employer's closure on January 1, 2020), requested reassignment, and there was no work available, no disqualification is imposed. As such, the separation is not disqualifying. Benefits are allowed, provided claimant is otherwise eligible. Because benefits are allowed, the issue of overpayment is moot. The employer's account may be charged for benefits paid.

DECISION:

The February 3, 2020 (reference 07) unemployment insurance decision is affirmed. The claimant's separation was not disqualifying. Benefits are allowed, provided claimant is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn