

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DOUGLAS PENROD
3000 J ST SW APT 1906
CEDAR RAPIDS IA 52404

EXPRESS SERVICES INC
PO BOX 720660
OKLAHOMA CITY OK 73172

Appeal Number: 05A-UI-05578-ET
OC: 04-24-05 R: 03
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 19, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held before Administrative Law Judge Julie Elder on June 14, 2005. The claimant participated in the hearing. Brian Fuller, Franchise Owner, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time temporary screen technician for Express Services from October 28, 2004 to April 25, 2005. His last assignment ended because he had two no-call no-shows. The employer issued a verbal warning to the claimant after his first no-call no-show on April 4, 2005. After the claimant was a no-call no-show on April 11, 2005, the client requested the claimant be removed from that assignment. The employer spoke with the claimant on April 12, 2005, advising him his assignment was ended due to poor attendance. The claimant argued with the employer about his assignment ending. The employer then advised the claimant he was required to maintain contact with the employer for further assignments. When the employer did not hear from the claimant, he was considered to have voluntarily quit as of April 25, 2005.

The claimant has filed and claimed unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5-1 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.

The claimant was removed from his last assignment due to poor attendance. On April 12, 2005, the employer specifically reminded him of the requirement that he maintain contact with the employer for further assignments. He was considered to have voluntarily quit after the employer did not hear from him for several weeks. An employee quits his job only if he intends to quit and carries out that intent by some overt act. Peck v. Employment Appeal Bd., 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out when he failed to maintain contact with the employer even after the employer specifically reminded him of that requirement. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code section 96.6-2. The administrative law judge concludes the claimant has not satisfied that burden and consequently benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The May 19, 2005, reference 01, decision is reversed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$945.00.

je/pjs