

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN L MARTINEZ

Claimant

APPEAL NO. 09-UI-03610-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC

Employer

**Original Claim: 03/16/08
Claimant: Respondent (1)**

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

Iowa Code section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 25, 2009, reference 03, decision that allowed benefits effective January 23, 2009. After due notice was issued, a hearing was held on April 1, 2009. Claimant John Martinez participated. Julie Augspurger, Staffing Consultant, represented the employer. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant.

ISSUES:

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

Whether the claimant has been able and available for work since January 23, 2009, when he separated from his most recent temporary work assignment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. John Martinez established his employment relationship with Express Services in 2007. Mr. Martinez's most recent temporary work assignment commenced on July 29, 2008 and ended on January 23, 2009. The assignment was full-time temporary. Mr. Martinez completed the assignment and was laid off from the assignment because the client's business had slowed. On Friday, January 23, 2009, Shelby Spiers, Front Desk Coordinator for Express Services, notified Mr. Martinez that his assignment would be ending that day. Ms. Spiers directed Mr. Martinez to contact the temporary employment agency the following Monday and to continue to make contact with the staffing agency on a weekly basis thereafter. Mr. Martinez contacted the staffing agency on Monday, January 26, 2009 and has maintained regular contact with the staffing agency since that time for the purpose of securing a new work assignment.

The employer has an end-of-assignment notification policy that required Mr. Martinez to contact the employer within three working days of the end of an assignment. The policy is set out as a

separate policy on a document that contains only that policy. Mr. Martinez contacted the employer on the next business day following the end of his assignment.

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 evidence indicates that Mr. Martinez completed the assignment that ended on January 23, 2009 and was laid off from the assignment on that day. The weight of the evidence indicates that the staffing agency knew on day the assignment ended that the assignment was ending. The weight of the evidence indicates that Mr. Martinez contacted the employer the following business day for the purpose of securing a new assignment, but no additional work was available. Mr. Martinez's January 23, 2009 separation from the employer was for good cause attributable to the employer. Mr. Martinez is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Martinez.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence indicates that since Mr. Martinez has been able to work and available for full-time work and work referrals since he established the additional claim for

benefits that was effective January 25, 2009. Mr. Martinez is eligible for benefits, provided he is otherwise eligible.

DECISION:

The Agency representative's February 25, 2009, reference 03, decision is affirmed. The claimant's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant has been able and available for work since he established the additional claim for benefits that was effective January 25, 2009. The claimant is eligible for benefits, provided he 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/kjw