

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTHONY T TUCKER
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 15A-UI-09282-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/19/15
Claimant: Appellant (1)

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 13, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination he voluntarily quit his employment without good cause attributable to the employer when he failed to report for work for three days without notification. The parties were properly notified about the hearing. A telephone hearing was held on September 3, 2015. Claimant Anthony Tucker participated on his own behalf. Employer Express Services, Inc. participated through Staffing Consultant Jim Cole.

ISSUE:

Did the claimant quit by not reporting for an additional work assignment within three business days of the end of the last assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on January 24, 2014, and was separated from employment on July 20, 2015. For the year and a half prior to his separation, he worked full-time as a general laborer for one of the employer's clients. The client decided to end the claimant's assignment due to a poor attitude and failure to notify the employer or client when he was going to miss work. Staffing Consultant Jim Cole met with the claimant to notify him of the end of his assignment. At the end of the meeting, the claimant told Cole to let him get his unemployment. He did not contact the employer within three days of the end of his assignment to notify it that he was available for work per the written policy he signed upon his hire.

REASONING AND CONCLUSIONS OF LAW:

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

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. 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.

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.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The plain language of the statute allows benefits for a claimant “who notifies the temporary employment firm of completion of an employment assignment *and* who seeks reassignment.” (Emphasis supplied.)

The claimant argued he was laid off due to a lack of work and he told Cole to let him know if he needed any help. The claimant acknowledged he did ask Cole about receiving unemployment benefits. The employer stated the claimant’s assignment, but not his employment, was ended due to misconduct and he failed to notify it within three days of the end of the assignment that he was available for work.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer’s version of events more credible. The claimant made contradictory statements during his testimony and was not forthcoming with his answers. The employer was able to provide details about different incidents, while the claimant generally denied everything.

In this case, the employer had notice of the claimant’s availability because it notified him of the end of the assignment but he did not request another assignment. The claimant’s reference to unemployment benefits at the end of his meeting with Cole indicated he was not seeking reassignment. The claimant did not contact the employer after the meeting with Cole to notify it that he was seeking reassignment. The claimant voluntarily quit his employment without good cause attributable to the employer. Benefits are denied.

DECISION:

The August 13, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant's separation was not attributable to the employer. Benefits are withheld until such time as he works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/pjs