

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

PAUL D SPRINGER
PO BOX 405
MASON CITY IA 50401

EXPRESS SERVICES INC
PO BOX 720660
OKLAHOMA CITY OK 73172-0660

Appeal Number: 04A-UI-06153-DT
OC: 03/21/04 R: 02
Claimant: Appellant (2/R)

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-j – Temporary Employment
871 IAC 24.26(19) – Temporary Employment
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

Paul D. Springer (claimant) appealed a representative's May 28, 2004 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Express Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 28, 2004. The claimant participated in the hearing. Jamie Mullins appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment?

FINDINGS OF FACT:

The employer is a temporary staffing agency. The claimant began taking assignments through the employer on February 12, 2004. As of the date of the hearing, he had worked on three assignments. His second assignment began on or about March 22, 2004. He worked full time as a general laborer at the employer's business client; through approximately April 16, 2004 he worked on a first shift position from 7:00 a.m. through 3:00 p.m. Monday through Friday. Beginning April 19 he was transferred to a second shift position from 3:00 p.m. through 11:00 p.m. Monday through Friday. His last day of work was on or about May 4, 2004.

The claimant had pulled a work-related injury on the assignment on or about May 3. He worked the rest of the shift that day, and at least part of the shift the following day. On May 5, 2004, he called into the employer and reported that he hurt too much to work that day. Ms. Mullins, a staffing consultant, told the claimant to come into the employer's office and complete a report of injury, which the claimant did. The claimant and Ms. Mullins came to a consensus that he would take a few days off and rest. While the claimant was in the employer's office, Ms. Mullins got in contact with the business client, which indicated that it would simply end the claimant's assignment. The claimant also contacted the employer once a week to seek reassignment as required by the employer's policies, including May 13 and May 20.

On or about May 21 and perhaps other times thereafter, there were some contacts between the employer and the claimant in which there may have been offers of work which the claimant did not accept.

The claimant established a claim for unemployment insurance benefits effective March 21, 2004. He filed an additional claim effective May 9, 2004.

REASONING AND CONCLUSIONS OF LAW:

The essential question in this case is whether there was a disqualifying separation from employment.

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.

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 intent of the statute is to avoid situations where a temporary assignment has ended and the claimant is unemployed, but the employer is unaware that the claimant is not working could have been offered an available new assignment to avoid any liability for unemployment insurance benefits. Where a temporary employment assignment has ended and the employer is aware of the end of that assignment, the employer is already on "notice" that the assignment is ended and the claimant is available for a new assignment; where the claimant knows that the employer is aware of the ending of the assignment, he has good cause for not separately "notifying" the employer. The statute does not require that a claimant seek reassignment, it only requires that the employer have "notice" of the end of the assignment.

Here, the employer was aware that the business client had ended the assignment; it considered the claimant's assignment to have been completed. Regardless of whether the claimant reported for a new assignment, the separation is deemed to be completion of temporary assignment and not a voluntary leaving; a refusal of an offer of a new assignment would be a separate potentially disqualifying issue. Further, the claimant did maintain the weekly contact with the employer. Benefits are allowed, if the claimant is otherwise eligible.

An issue as to whether the claimant might have refused suitable offers of work arose during the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code Section 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code Section 96.19-3. The claimant's base period began October 1, 2002 and ended September 30, 2003. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's May 28, 2004 decision (reference 02) is reversed. The claimant's separation was not a voluntary quit but was the completion of a temporary assignment. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the work offer issue. The employer's account is not subject to charge in the current benefit year.

ld/kjf