

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE M BREITBACH
Claimant

APPEAL NO. 14A-UI-07551-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 05/04/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Michelle Breitbach filed a timely appeal from the July 21, 2014, reference 01, decision that disqualified her for benefits. After due notice was issued, a hearing was held on November 7, 2014. Ms. Breitbach participated. Brandy Whittenbaugh represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-07552-JTT. The administrative law judge took official notice of the agency's administrative record of the period for which the claimant's claim was active (DBRO) and the claimant's use of the Internet to make weekly claims during that period (KCCO).

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Express Services, Inc., is a temporary employment agency with a branch office in Cedar Rapids. Michelle Breitbach performed work for Express Services in a single full-time, temp-to-hire work assignment. The assignment started on May 13, 2014 and ended on Friday, June 13, 2014. After Ms. Breitbach concluded her work that day, the client business ended the assignment because Ms. Breitbach was not meeting the required quota and had too many errors. Ms. Breitbach had performed the work to the best of her ability and the separation from the assignment was not based on misconduct. Express Services Staffing Consultant Julie Stenz notified Ms. Breitbach by telephone on June 13, 2014, that the assignment was ended. Ms. Stenz directed Ms. Breitbach to return her access key to the client business's facility. Ms. Breitbach made arrangements to return her key on Monday, June 16, 2014. Neither the employer nor Ms. Breitbach raised the topic of whether Ms. Breitbach would be interested in an additional assignment. Ms. Breitbach was in fact not interested in an additional assignment in the Cedar Rapids area because she had lost her means of transportation and had been carpooling from her home in Manchester to the workplace in Marion. Ms. Breitbach had no further contact with the employer after the conversation on June 13, 2014.

On May 7, 2014, the employer had Ms. Breitbach sign an end-of-assignment policy. The policy stated as follows:

I agree to call my Express Supervisor at the end of each job assignment. If I do not call within three (3) working days from the end of an assignment, Express can consider me to have voluntarily quit. To make sure that Express knows I am available for work when I am not on an assignment, I will call in at least once a week to let Express know I am available.

I understand and agree to these terms and conditions.

The policy was silent with regard to any potential consequences to Ms. Breitbach's unemployment insurance benefit eligibility in the event she failed to make the required contact within three days of the end of an assignment. The employer did not provide Ms. Breitbach with a copy of the policy she signed.

In May 2014, the employer also had Ms. Breitbach sign a handbook acknowledgement form that referenced several different policies. Amongst the policies was an end-of-assignment policy that required that Ms. Breitbach notify the employer within three working days of the end of an assignment or be deemed a voluntary quit. The policy statement on that document referred to potential unemployment insurance consequences that could result from failure to contact the employer. Ms. Breitbach received a copy of the handbook acknowledgment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or

incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The evidence indicates that the client's business's decision to end the assignment was based on Ms. Breitbach's inability to perform to the satisfaction of the client business and not on misconduct in connection with the employment. Thus the involuntary separation from the assignment would not disqualify Ms. Breitbach for unemployment insurance benefits. Ms. Breitbach would be eligible for benefits provided she meets all other eligibility requirements.

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 evidence in the record indicates that the employer's stand-alone end-of-assignment policy did not satisfy the requirements of the temporary employment statute because it did not state the unemployment insurance consequences of failing to report to the employer within three days of the end of an assignment to request a new assignment. In addition, the employer did not give Ms. Breitbart a copy of that end-of-assignment policy document that Ms. Breitbart signed. What the employer did give Ms. Breitbart was a handbook acknowledgment receipt that set forth several conditions of the employment. Amongst those several provisions was reference to the end-of-assignment notice requirement and the unemployment insurance consequences. That form of notice did not comply with temporary employment statute requirements. Thus, the employer did not meet its obligation to provide appropriate notice to Ms. Breitbart of her obligation to contact the employer within three days of the end of an assignment to request an additional assignment or be deemed to have quit and be at risk of being ineligible for unemployment insurance benefits. Because the employer did not meet its obligation under the statute, the statute cannot be used as a basis for disqualifying Ms. Breitbart for benefits. Instead, Ms. Breitbart fulfilled her obligation to the employer, her contract of hire, when she completed the assignment and was under no further obligation to seek employment through Express Services.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Breitbart's June 13, 2014 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Ms. Breitbart is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The July 21, 2014, reference 01, decision is reversed. The claimant's June 13, 2014 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

This decision should be read in conjunction with the decision entered in Appeal Number 14A-UI-07552-JTT regarding the claimant's availability for work.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs