

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHAN E POPE
Claimant

APPEAL NO. 09A-UI-05463-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

**Original Claim: 02/08/09
Claimant: Respondent (2-R)**

Section 96.5-1-j – Separation from Temporary Employment
Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Express Services, Inc. filed a timely appeal from an unemployment insurance decision dated March 31, 2009, reference 03, that allowed benefits to Nathan E. Pope. After due notice was issued, a telephone hearing was held April 28, 2009, with Mr. Pope participating. Staff Consultant Holly Burtness participated for the employer.

ISSUE:

Was the claimant's separation from employment a disqualifying event?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Nathan E. Pope was an employee of Express Services, Inc., working on assignments with clients of the employer. His last assignment was with Behr Iron and Steel. He worked there from May 8, 2008, until October 7, 2008. Thinking that he would be recalled to that assignment in a few weeks, Mr. Pope did not seek re-assignment from Express Services, Inc. When hired, he received a separate written notice advising him that he must contact Express Services, Inc. within three working days after the end of each assignment in order to seek re-assignment. The notice advised him that if he did not do so, his separation would be treated as a voluntary quit.

Mr. Pope has received unemployment insurance benefits since filing a claim effective February 8, 2009.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Mr. Pope's failure to request re-assignment from Express Services at the end of his assignment was a disqualifying event. It was.

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.

The evidence in this record persuades the administrative law judge that the employer put Mr. Pope on notice at the time of hire that the consequence of failing to seek re-assignment within three working days after the end of each assignment could have an adverse impact on his eligibility for unemployment insurance benefits. Mr. Pope acknowledged in his testimony that he had not sought re-assignment after October 7, 2008. The administrative law judge concludes from the law and the facts that benefits must be withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether Mr. Pope must repay the benefits he has received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated March 31, 2009, reference 03, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The question of repayment of benefits is remanded to the Unemployment Insurance Services Division.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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