

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**JAY E LEIGH**  
Claimant

**APPEAL NO. 17A-UI-11743-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 03/05/17**  
**Claimant: Appellant (4)**

Iowa Administrative Code rule 871-24.1(113) – Layoff

**STATEMENT OF THE CASE:**

Express Services, Inc. filed a timely appeal from the November 8, 2017, reference 04, decision that disqualified him for benefits and that relieved the employer account of Express Services, Inc. of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Leigh voluntarily quit on October 18, 2017, by failing to contact Express Services within three working days of completion of a work assignment after having been told in writing of his obligation to make to such contact. After due notice was issued, a hearing was held on December 6, 2017. Mr. Leigh participated. Carrie Cannon represented Express Services, Inc.

**ISSUE:**

Whether the October 2017 separation disqualifies Mr. Leigh for benefits or relieves the employer account of Express Services, Inc. of liability for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: In July 2015, Jay Leigh established an employment relationship with Express Services, Inc., a temporary employment agency. At that time, Express Services had Mr. Leigh sign an End-of-Assignment Reporting Requirements policy that stated as follows:

I agree to call my Express Supervisor at the end of the each job assignment. If I do not call within three 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 am available.

I understand and agree to these terms and conditions.

The policy statement Express Services had Mr. Leigh sign did not include a statement that failure to contact Express Services within the required period would cause the employer to conclude that Mr. Leigh had voluntarily quit the employment or that failure to make contact could affect Mr. Leigh's eligibility for unemployment insurance benefits. There is insufficient evidence to establish that Mr. Leigh received a copy of the end-of-Assignment Reporting Requirements policy at the time he signed it in July 2015.

After Mr. Leigh established his employment relationship with Express Services, Inc. in 2015, he performed work in a temp-to-hire assignment at Opening Specialists, Inc. In 2015, Mr. Leigh voluntarily quit the employment at Express Services, Inc. to become an employee of Opening Specialists, Inc. Mr. Leigh separated from the Opening Specialist, Inc. employment on or about March 7, 2017.

On March 6 2017, Mr. Leigh contacted Express Services, Inc. in connection with his separation from Opening Specialists, to request assistance in obtaining employment and to update his work history and contact information. Express Services did not offer Mr. Leigh employment through that contact and did not have Mr. Leigh sign a policy statement obligating him to contact Express Services at the end of a work assignment.

In May 2017, Mr. Leigh applied for a full-time service technician job with Serv Pro through direct contact with Serv Pro. Todd Wiedeman, Serv Pro business owner, offered Mr. Leigh employment and Mr. Leigh accepted the offer of what he believed to be full-time, permanent employment. At the time of hire, Mr. Wiedeman told Mr. Leigh that he would have to hire him through Express Services. Mr. Wiedemen did not refer Mr. Leigh to Express Services. Mr. Leigh did not contact Express Services. Express Services did not making contact with Mr. Leigh in connection with commencement of his work at Serv Pro.

Mr. Leigh continued to perform full-time work for Serv Pro until October 13, 2017, when Mr. Wiedeman notified Mr. Leigh that he was laying off Mr. Leigh due to a slowing of business. Mr. Wiedeman told Mr. Leigh that Serv Pro would notify Express Service of the layoff. Up to that point, Mr. Leigh's only contact with Express Services since his 2015 separation from Express Services had been a July 2017 telephone call from an Express Services representative in which the Express Services representative indicated that she needed information concerning Mr. Leigh's work hours. Mr. Leigh referred the Express Services representative to the Serv Pro office manager.

Following his October 13, 2017 layoff, Mr. Leigh did not make contact with Express Services and was unaware of any obligation to do so.

#### **REASONING AND CONCLUSIONS OF LAW:**

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See Iowa Administrative Code rule 871-24.25.

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "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.

Given Mr. Leigh's history with Express Services, Mr. Wiedeman's statement to Mr. Leigh at the time of hire in May 2017, that Serv Pro would be hiring Mr. Leigh through Express Services, was sufficient to put Mr. Leigh on notice that he was commencing the work with Serv Pro *as an employee of Express Service*. The evidence in the record establishes that Mr. Leigh was laid off from the Serv Pro assignment effective October 13, 2017. At that time, Mr. Leigh fulfilled his obligation to Serv Pro and to Express Services. Express Services took no steps in 2017 to notify Mr. Leigh of an obligation to contact Express Services at the completion of a work assignment or be deemed to have voluntarily quit and risk unemployment insurance benefit eligibility. Mr. Leigh's signing of the End-of-Assignment Reporting Requirements policy 2015 was insufficient notice of an obligation to contact Express Services at the end of the 2017 Serv Pro assignment or otherwise. The policy fails to satisfy the statutory requirements. The policy says nothing about failure to contact Express Services within three working days of completion of a work assignment prompting Express Services to deem Mr. Leigh to have voluntarily quit and says nothing about potential impact on unemployment insurance benefit eligibility. In addition, there is insufficient evidence to establish that Mr. Leigh received a copy of the policy he signed in 2015.

**DECISION:**

The November 8, 2017, reference 04, decision is modified as follows. The claimant was laid off from a work assignment effective October 13, 2017. The layoff did not disqualify the claimant for benefits. The claimant separated from Express Services, effective October 13, 2017, for good cause attributable to the employer after fulfilling the contract of hire. The claimant was under no obligation to make further contact with Express Services or seek additional work through Express Services. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer account of Express Services, Inc. may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs