

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DAVID A HOLMES**

Claimant

**APPEAL 19A-UI-09644-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**

Employer

**OC: 11/03/19**

**Claimant: Respondent (5)**

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

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the November 26, 2019 (reference 01) unemployment insurance decision that allowed unemployment insurance benefits to the claimant based upon his discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on January 6, 2020. The claimant, David A. Holmes, did not participate. The employer, Express Services Inc., participated through witness Carrie Cannon. Employer's Exhibit 1 was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

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

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is a temporary employee of a temporary employment firm. Claimant began his employment on January 10, 2019. Claimant received his most recent job assignment from the employer to work full-time at Uehlner Tool & Dye as a utility worker. This job assignment ended on November 1, 2019, due to the claimant's attendance issues.

Claimant was notified on November 4, 2019 that his job assignment had ended and he requested additional work from the employer that same day. Claimant has continued to contact the employer for additional job assignments. Claimant has not been discharged by the employer at this time. No further work has been available to claimant.

Claimant's administrative records establish that he has received benefits of \$2,880.00 for the eight weeks between November 3, 2019 and December 28, 2019. The employer participated by telephone in the fact finding interview; however, it provided information and documentation in its statement of protest which stated that the claimant was discharged from employment due to attendance issues when that was not correct. Claimant's job assignment had ended; however, he was not discharged from the employer.

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

For the reasons that follow, the administrative law judge concludes as follows:

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. (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.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment. Since he contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and there was no work available, no disqualification is imposed. As such, the claimant complied with Iowa Code section 96.5(1)j and he did not

voluntarily quit without good cause attributable to the employer. Further, claimant was never discharged from employment and remains eligible for reassignment with this employer. Benefits are allowed, provided the claimant is otherwise eligible. Because benefits are allowed, the issue of overpayment is moot. The employer's account may be charged for benefits paid.

**DECISION:**

The November 26, 2019 (reference 01) unemployment insurance decision is modified with no change in effect. No separation disqualification is imposed. Benefits are allowed, provided he is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/scn