

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RANDEN BOLTEN
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 20A-UI-01444-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/29/19
Claimant: Respondent (1)**

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
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, Express Services Inc., filed an appeal from the February 10, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 4, 2020. The claimant registered for the hearing but was unavailable when called and did not participate. The employer participated through Carrie Cannon, lead worker.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant quit by not reporting for an additional work assignment within three business days of the end of the last assignment?
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 was employed on assignment at Right Height beginning December 19, 2019. He worked on assignment for one day. On December 20, 2019, he was a no call/no show. He was not scheduled to work on December 21 or 22, 2019. At this time, the assignment had ended and the claimant did not have the option to return.

On December 23, 2019, he reported to the employer he had missed his shift due to transportation. The claimant should have called Express Services to report the absence and had previously been warned for being a no call/no show on a different assignment. Even

though he was a no call/no show, the employer said he would be eligible for future assignments. The employer did not provide its reassignment policy but stated employees are supposed to request new assignments within three days of an assignment ending. The claimant called the employer on December 26, 2019 to request a new assignment and again on December 27, 2019 to apologize for his conduct on December 20, 2019. No new work was offered to the claimant when he requested a new assignment.

The following week, the claimant established a claim for unemployment insurance benefits with an effective date of December 29, 2019. The claimant has received \$3,510.00 in unemployment insurance benefits since establishing his claim. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the employer.

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(15) provides:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual has good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently acceptable means of communications. Working days means the normal days in which the employer is open for business.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so they may be reassigned and continue working. The plain language of the statute allows benefits for a claimant "who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment."

The employer did not provide a written copy of the reporting policy according to the specific terms of Iowa Code § 96.5(1)j, but stated an employee is to contact the employer within three days of the assignment ending to request a new assignment. In this case, the administrative law judge is persuaded the claimant's assignment ended on December 23, 2019, when he made contact with the employer to explain why he missed his shift on December 20, 2019. December 24-25, 2019 were holidays and the claimant made contact again with the employer on December 26, 2019 to request a new assignment. The employer did not have work available at the time. Since he contacted the employer upon notification of the end of the assignment, requested reassignment, and there was no work available, benefits are allowed, provided he is otherwise eligible.

Because the claimant is allowed benefits, the issues of overpayment and relief of charges are moot at this time and will not be further discussed.

DECISION:

The unemployment insurance decision dated February 10, 2020, (reference 01) is affirmed. The claimant's separation from employment was attributable to the employer. The employer had adequate knowledge about the conclusion of the claimant's assignment and the request for more work but had no further work available at the time. Benefits are allowed, provided the claimant is otherwise eligible.

Jennifer L. Beckman
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Decision Dated and Mailed

jlb/scn