

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ISIE BLYTHE
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 18A-UI-02990-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/28/18
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
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:

Express Services, Inc. (employer) filed an appeal from the March 1, 2018, reference 02, unemployment insurance decision that allowed benefits based upon the determination Isie Blythe (claimant) worked until her assignment was completed and requested another job assignment within three days. The parties were properly notified about the hearing. A telephone hearing was held on April 2, 2018. The claimant participated. The employer participated through Administrative Recruiter Madi Jantsch. No exhibits were offered into the record. The administrative law judge took official notice of the administrative record, specifically the fact-finding documents.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

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

Can 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 in a temporary full-time position as a Receiving Clerk beginning on October 30, 2017, and her assignment ended on February 1, 2018. The following day, the claimant met with Molly Wand to discuss her qualifications and what she was looking for in a new position. At that time, Wand did not have any assignments for the claimant except a short-term weekend assignment.

The administrative record reflects that the claimant has received unemployment benefits in the amount of \$2,142.00, since filing a claim with an effective date of January 28, 2018, for the eight

weeks ending March 24, 2018. The administrative record also establishes that the employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was with good cause attributable to the employer. Benefits are allowed.

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. (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 decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the conversation held between the claimant and Wand on February 2, 2018. No request to continue the hearing was made and no written statement of the individual was offered. As the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

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 she 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. Benefits are allowed.

As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

DECISION:

The March 1, 2018, reference 02, unemployment insurance decision is affirmed. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided she is otherwise eligible. The issue of overpayment is moot and charges to the employer's account cannot be waived.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn