

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD L CLEMONS
Claimant

APPEAL NO. 07A-UI-01107-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 10/08/06 R: 02
Claimant: Respondent (1)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

STATEMENT OF THE CASE:

Express Services filed a timely appeal from the January 24, 2007, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on February 14, 2007. Claimant Todd Clemons participated. Branch Manager Andre Smith represented the employer. The administrative law judge took official notice of the Agency's record of payments to the claimant.

ISSUE:

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer. It was.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Todd Clemons completed his most recent assignment through Express Services on December 22, 2006. The assignment had been full-time at Graham Manufacturing. Graham Manufacturing ended the assignment on December 22, 2006, when it laid Mr. Clemons off due to a lack of work orders. On December 22, Mr. Clemons went to Express Services and notified the temporary employment agency that his assignment had ended due to a layoff and that he was available for work. Express Services notified Mr. Clemons that it did not have a new assignment for Mr. Clemons. On May 17, 2006, Mr. Clemons had signed an agreement with Express Services whereby he agreed to notify Express Services within three working days of the end of an assignment.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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.

The evidence in the record indicates that Mr. Clemons properly notified the temporary employment agency within three working days of the end of his assignment that the assignment had ended and that he was available for work, but the agency did not have a new assignment for him.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Clemon's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Clemons is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Clemons.

The administrative law judge notes that this appeal commenced by the employer's corporate office appears not to have been made in good faith. The claims representative's notes from the fact-finding interview indicate that both parties were in agreement that Mr. Clemons had properly notified the temporary employment agency at the end of the assignment. At the hearing, the parties once again agreed that Mr. Clemons had properly notified the temporary employment agency at the end of the assignment.

DECISION:

The Agency representative's January 24, 2007, reference 02, decision is affirmed. The claimant's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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