

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM G CROSS

Claimant

APPEAL NO. 09A-UI-17936-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC

Employer

OC: 05/10/09

Claimant: Respondent (1-R)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 19, 2009, reference 04, decision that allowed benefits in connection with an October 16, 2009 separation. After due notice was issued, a hearing was held on January 11, 2010. Claimant William Cross participated. Holly Burtness represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

ISSUE:

Whether the claimant's separation from the temporary employment agency on October 16, 2009 was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: William Cross commenced working for the employer in July 2008. On October 5, 2009, Mr. Cross commenced work in a full-time temporary work assignment at Zinpro in Garner. Mr. Cross completed the assignment on Friday, October 16, 2009 and was laid off from the assignment at that time. Express Services Manager Holly Eichmann notified Mr. Cross of the lay-off on October 16, 2009. Mr. Cross expressed interest in a further assignment, but the employer did not have another assignment that would pay comparable wages to the Zinpro assignment. Mr. Cross had made \$10.00 per hour at Zinpro. The assignments the employer had available on October 16 only paid \$7.00 or \$8.00 per hour. Mr. Cross and Ms. Eichmann agreed to keep in contact regarding a suitable work assignment. On Wednesday, October 21, 2009, Mr. Cross contacted the employer to indicate he was available for a new assignment. This was within three working days of the end of the assignment at Zinpro. The employer did not have a suitable assignment available to Mr. Cross at that time. On October 27, the employer offered Mr. Cross a further full-time assignment, which Mr. Cross started on November 2, 2009.

Mr. Cross claimed unemployment insurance benefits for the weeks ending October 24 and 31, 2009 and then discontinued his claim.

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 establishes that Mr. Cross completed the assignment at Zinpro on October 16, 2009, that the employer did not have another suitable assignment for him at that point, and that he was laid off at that time. Mr. Cross made further contact with the employer within three working days of the end of the assignment, but the employer did not have a suitable assignment for him. The October 16, 2009 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Cross was eligible for benefits for the weeks ending October 24 and 21, 2009, provided he was otherwise eligible. The employer's account may be charged for those benefits.

This matter is remanded to the Claims Division for determination of whether there was a subsequent disqualifying separation from the temporary employment agency on November 6, 2009. That issue was not before the administrative law judge and the claimant was not willing to waive formal notice on the issue.

DECISION:

The Agency representative's November 19, 2009, reference 04,, decision is affirmed. The claimant's October 16, 2009 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant was eligible for benefits he received for the weeks ending October 24 and 31, 2009, provided he was otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

This matter is remanded to the Claims Division for determination of whether there was a subsequent disqualifying separation from the temporary employment agency on November 6, 2009.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs