

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID SAPPENFIELD
Claimant

APPEAL NO: 13A-UI-08427-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 06/23/13
Claimant: Respondent (2/R)

Iowa Code § 96.5-1-j - Voluntary Quit of Temporary Employment
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Express Services, Inc. (employer) appealed an unemployment insurance decision dated July 11, 2013, reference 01, which held that David Sappenfield (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 22, 2013. The claimant participated in the hearing. The employer participated through Angie Harris, Staffing Consultant.

ISSUE:

The issue is whether the claimant is disqualified for failure to contact the temporary employment agency within three working days after the completion of his assignment, when and if notified of this requirement at the time of hire.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment agency with a limited number of companies with whom it works. The claimant was initially hired in June 2007 and was most recently hired on July 5, 2013. At the time of hire, he signed the handbook and a separate document which both addressed the end of assignment reporting requirements. The employer requires employees to contact the employer to request work within 48 hours of the end of their work assignment or within three days as required by state law. Failure to do so will be considered a voluntary quit which could result in the loss of unemployment insurance benefits. The claimant received the handbook and a copy of this document.

The employer works with Crescent Park, Curries and Graham among a few others. The claimant had previously worked for Curries and Graham and the contract businesses would not accept him for any further assignments. The employer found an assignment for the claimant at Crescent Park on July 5, 2013. He worked in various assignments for Crescent Park off and on until January 24, 2013 when Crescent Park requested he be removed from the assignment and did not want him to return. The most recent assignment began on January 23, 2013.

The employer advised the claimant on January 24, 2013 that his assignment was over. The employer is required to document every time a claimant calls in or requests work. The employer has no documentation confirming the claimant made contact to request work until March 13, 2013. The claimant testified he did ask to work on a different shift at Crescent Park and that he requested other work but the employer has no record of it. However, he admitted he did not again make contact until March 13, 2013. The claimant said he did not contact the employer because he was so shocked at being let go from Crescent Park.

The claimant filed a claim for unemployment insurance benefits effective June 23, 2013 and has received benefits after the separation from employment. While no records are available from the fact-finding interview, the parties confirmed they both participated in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1. The employer herein is a temporary employment agency and temporary employment agencies are governed by Iowa Code § 96.5-1-j, which places specific restrictions on both the employer and the employee with regard to qualification for unemployment insurance benefits after a voluntary separation.

The claimant knew or should have known he was required to contact the employer after the assignment was over so the employer knew whether he was available for additional work. While he contends he requested additional work at the end of his assignment, the evidence does not support that contention but the evidence is clear that he did not contact the employer until March 13, 2013. The claimant did not satisfy the requirements of Iowa Code § 96.5-1-j and is disqualified from receiving unemployment insurance benefits as of June 29, 2013.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision. In some cases, the claimant might not have to repay the overpayment if all of the following conditions are met: 1) the overpayment results from a decision addressing the claimant's separation from employment; 2) there was no fraud or willful misrepresentation by the claimant; and 3) the employer failed to participate in the fact-finding interview. Iowa Code § 96.3-7(a) and (b).

In the case herein, a waiver cannot be considered because both parties participated in the fact-finding interview. This meets the definition of participation under 871 IAC 24.10 and the employer's account is not chargeable. Accordingly, the case is remanded to determine the amount of the overpayment which cannot be waived.

DECISION:

The unemployment insurance decision dated July 11, 2013, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for a determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css