

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATTHEW T RYAN**  
Claimant

**APPEAL NO. 09A-UI-02482-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**Original Claim: 01/04/09  
Claimant: Appellant (2/R)**

Section 96.5-1 – Voluntary Leaving  
Section 96.5-1-j – Temporary Employment  
871 IAC 24.26(19) – Temporary Employment

**STATEMENT OF THE CASE:**

Matthew T. Ryan (claimant) appealed a representative's February 16, 2009 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits in relation to a separation from his employment with Express Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 11, 2009. This appeal was consolidated for hearing with one related appeal, 08A-UI-02972-DT. The claimant participated in the hearing. Carey Schilling appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The employer is a temporary employment firm. The claimant began taking assignments with the employer on July 25, 2008. He worked full time at the employer's window manufacturing business client. His last day on that assignment was December 24, 2008. The assignment ended because the business client deemed it completed.

On the morning of December 24, a representative of the employer contacted the claimant to inform him of the ending of the assignment at the window manufacturing business client. The claimant inquired about other work, and the representative informed the claimant that there might be a one-night assignment that evening at a dairy business client to begin at 6:00 p.m. The claimant indicated interest, so the representative gave the claimant a name and a phone number to contact.

That afternoon the claimant's mother, who was suffering from cancer, was hospitalized. The claimant attempted to call the employer's representative to indicate that he would have to decline the assignment for work that evening, but the employer's offices were closed that afternoon, as it was Christmas Eve. The claimant also attempted to call the business client's representative at the number the employer's representative had provided, but was unable to reach anyone at the

business client. As a result, he made a trip to the business client at 6:00 p.m. to advise the business client that he would be unable to accept the work that evening.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that he quit by not working the assignment on December 24. Since the claimant did not actually start working the assignment but rather, in effect, refused the assignment, the administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code §96.6-2.

The claimant's most recent temporary employment assignment ended by the completion of the window manufacturing assignment on December 24 and the claimant did seek reassignment at that time. Iowa Code § 96.5-1-j; 871 IAC 24.26(19). The claimant is not required by the statute to remain in regular periodic contact with the employer in order to remain "able and available" for work for purposes of unemployment insurance benefit eligibility. Regardless of whether the claimant continued to seek a new assignment, the separation itself is deemed to be the completion of a temporary assignment and not a voluntary leaving. The refusal of an offer of a new assignment is a separate potentially disqualifying issue which has not yet been reviewed. The issue of whether the claimant refused a suitable offer of work and, if so, whether it was without a good cause so as to disqualify him was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5). Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative's February 16, 2009 decision (reference 04) is reversed. The claimant's separation was not a voluntarily quit but was the completion of a temporary assignment. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the refusal of suitable work issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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