

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATT J SEIFERT
Claimant

APPEAL NO. 08A-UI-01652-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 12/30/07 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 February 5, 2008, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on March 4, 2008. The claimant did not respond to the hearing notice and did not participate. Staffing Consultant Holly Burtness represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit One into evidence.

The claimant contacted the administrative law judge several hours after the hearing record had closed, but did not provide good cause to reopen the record.

ISSUE:

Whether the claimant's separation from the temporary employment agency 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: The employer is a temporary employment agency. Matt Seifert commenced his employment relationship with Express Services on July 26, 2006 and was placed in two temporary employment assignments. The last assignment ended on November 12, 2007 at the request of the client business. The client business advised Express Services that it was dissatisfied with Mr. Seifert's work, but provided no additional details. On November 13, 2007, an Express Services representative notified Mr. Seifert by telephone that the assignment had ended. At that time, Mr. Seifert inquired about further assignments, but Express Services had no assignments available. There was no further contact between Mr. Seifert and Express Services.

On July 25, 2006, Express Services had Mr. Seifert sign his acknowledgment of the "End-of-Assignment Reporting Requirements" policy. This was a stand alone policy statement that required Mr. Seifert to call his Express Personnel supervisor within three working days of the end of a job assignment to notify Express Services that he was available for another

assignment. The policy went further and imposed a requirement that Mr. Seifert contact Express Services weekly. Express Services provided Mr. Seifert with a copy of the policy.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Mr. Seifert's separation from the temporary employment agency was for good cause accountable to the employer. It was.

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 fails to establish that Mr. Seifert was discharged from the assignment for misconduct in connection with the assignment that would disqualify him for unemployment insurance benefits. See Iowa Code section 96.5(2)(a) and 871 IAC 24.32(1)(a). The evidence indicates, instead, that Mr. Seifert completed the assignment.

The evidence indicates that the employer had an end-of-assignment notification policy that included the requirements set forth at Iowa Code section 96.5(1)(j). The policy was a stand alone policy. The policy set forth the requirement of notice to the employer within three working days. The employer provided a copy of the policy to Mr. Seifert. However, the employer's policy went beyond the statute and imposed the additional requirement that Mr. Seifert contact the employer once a week after his assignment ended. The statute does not authorize or support this additional requirement, or the failure to meet the weekly reporting requirement, as a basis for disqualifying a claimant for unemployment insurance benefits.

The evidence indicates that Mr. Seifert was in direct telephone contact with Express Services on November 13, 2007 and that it was through this contact that Mr. Seifert learned the assignment was at an end. The evidence indicates that the employer was aware the assignment was done at the time the employer contacted Mr. Seifert to notify Mr. Seifert of the same. The evidence indicates that Mr. Seifert immediately expressed interest in a new assignment, but that Express Services had no assignments available. This contact between the employer and Mr. Seifert satisfied both the letter and the purpose of Iowa Code section 96.5(1)(j), because the employer knew both that the assignment had ended and that Mr. Seifert was making himself available for further assignments. Mr. Seifert's election not to maintain further contact with the Agency after it told him it had no further work for him, would not disqualify him for unemployment insurance benefits.

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

DECISION:

The Agency representative's February 5, 2008, reference 03, 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

jet/pjs