

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**LEA N NYIRABAKUNGU**  
Claimant

**APPEAL NO. 18A-UI-05608-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 04/22/18**  
**Claimant: Respondent (1)**

Section 96.5-1-j – Separation from Temporary Employer  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Express Services (employer) appealed a representative's May 7, 2018, decision (reference 01) that concluded Lea Nyirabakungu (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 4, 2018. The claimant participated personally through Silver Matanda, Interpreter. The employer participated by Olivia Watson, Recruiting Specialist. The employer offered and Exhibit 1 was received into evidence. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 service. English is not the claimant's first language. She has issues understanding and reading English. The claimant performed services off and on from June 28, 2017, through April 9, 2018. She signed a document on June 27, 2017, indicating she was to contact the employer within three working days following the completion of an assignment to request placement in a new assignment. The document did indicate the consequences of a failure to notify the employer. The claimant was given a copy of the document. The employer did not know whether the document was separate from the contract for hire.

She signed another document on June 27, 2017, indicating she "must communicate to Express within 48 hours of the end of an assignment (*or 3 days as mandated by state law*) to ensure my active status as an Express Associate, and continue to communicate weekly (*or 7 days as mandated by state law*) to remain eligible for assignments." It stated that failure to report the end of an assignment could affect her unemployment benefits. The employer gave the claimant a copy of this document, too.

On April 9, 2018, the employer notified the claimant that her assignment had ended. On April 10, 2018, the claimant came to the employer's office to ask about her paycheck. On other days she sought reassignment from the employer but no work was available.

The claimant filed for unemployment insurance benefits with an effective date of April 22, 2018. The employer participated personally at the fact finding interview on May 4, 2018, by Olivia Watson.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not separated from employment for a disqualifying reason.

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Under the Iowa Code the employer must advise the claimant of the three working day notice requirement and give the claimant a copy of that requirement. The notice requirement must be

separate from the contract for hire. On June 27, 2017, the employer told the claimant she was supposed to call the employer within three working days of the end of the assignment, forty-eight hours of the end of the assignment, and three days from the end of the assignment. The employer added an extra requirement of having the claimant communicate with the employer weekly or for seven days. Both documents indicated the claimant had to call at the end of an assignment. Neither of the documents indicated that the claimant had to specifically ask for reassignment.

The employer did not provide the claimant with the proper notice requirements because it provided correct information amongst incorrect information. A reasonable employee would not know which instructions to follow. It has, therefore, failed to satisfy the requirements of Iowa Code Section 96.5-1-j. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's May 7, 2018, decision (reference 01) is affirmed. The claimant was separated from the employer for good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs