

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ZACKARIA WEBER**

Claimant

**APPEAL NO. 12A-UI-04274-WT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**

Employer

**OC: 03/18/12**

**Claimant: Respondent (2-R)**

Section 96.5-1 – Voluntary Quit

Section 96.5-1-j – Reassignment from Temporary Employment

Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated April 10, 2012, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 7, 2012. Claimant participated. Employer participated by Jody Korleski, staffing consultant.

**ISSUES:**

The first issue is whether the claimant quit or was discharged.

The second issue is whether claimant sought reassignment from temporary employment in accordance with Iowa law.

The final issue is whether claimant was overpaid.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Employer is a staffing agency. Claimant was assigned to work for Uniselect, a client of the employer. Claimant worked for employer from February 6, 2012 to February 11, 2012. The representative from Uniselect released claimant from work after he discovered that criminal charges were pending against the claimant. The claimant never called in to seek reassignment pursuant to the employer's work rules.

**REASONING AND CONCLUSIONS OF LAW:**

The initial question raised in this case is the nature of the separation. Separations are categorized into four separate categories under Iowa law.

24.1(113) Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

- a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of labor-saving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
- b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
- c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
- d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

See Iowa Administrative Code 871—24.1.

The nature of a separation is generally determined by ascertaining which party initiated the separation. If the employer initiated the separation, with intent to permanently sever the employment relationship, then the separation is generally considered a termination or layoff. If the claimant initiated the separation, with intent to permanently sever the employment relationship, then the separation is generally considered a voluntary quit.

It is the employer's burden to prove the nature of the separation. This is often extremely significant in many cases, because the burden generally rests with the party who initiated the separation. If the employer initiated the separation, the employer then must prove misconduct (or another basis for disqualification). If the claimant initiated the separation, then the claimant must prove good cause attributable to the employer.

The claimant did not quit. He was terminated by the employer's client. Since the employer presented no evidence of misconduct, the claimant would be eligible for benefits purely on the basis of the separation. However, there is a second issue.

Individuals employed by a temporary employment firm shall be disqualified from benefits if they fail to seek reassignment in accordance with Iowa Code section 96.5(1)(j) (2011). "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." Id.

In this context, actual knowledge is considered "notice." In other words, if an employer has actual knowledge of the end of the assignment, then the employee is not required to comply with the provisions of section 96.5(1)(j).

In this matter, the evidence clearly established that, after being terminated by the employer's client, Uniselect, the claimant did not follow the employer's rule and contact the employer within three days of the end of the assignment. Rather, the evidence established that the employer attempted to contact claimant and he did not return the phone call.

The next issue concerns an overpayment of unemployment insurance benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

This matter is remanded to the Claims Section for determination of an overpayment.

**DECISION:**

The representative's decision dated April 10, 2012, reference 01, is reversed in favor of the employer. Unemployment insurance benefits are withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. This matter is remanded to the Claims Section for determination of overpayment.

---

Joseph L. Walsh  
Administrative Law Judge

---

Decision Dated and Mailed

jlw/kjw