

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID A PARKER**  
Claimant

**APPEAL NO. 15A-UI-09601-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 07/12/15**  
**Claimant: Appellant (2)**

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

**STATEMENT OF THE CASE:**

David Parker filed a timely appeal from the August 13, 2015, reference 02, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits based on an Agency conclusion that he had voluntarily quit on July 3, 2015 without good cause attributable to the employer. After due notice was issued, a hearing was held on September 11, 2015. Mr. Parker participated. Valerie Hefel represented the employer and presented additional testimony through Rachel Lugin. Exhibits A and B were received into evidence.

**ISSUE:**

Whether the claimant's separation from the temporary employment agency on or about July 3-7, 2015 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: Express Services, Inc. is a temporary employment agency. On June 2, 2015, David Parker began a full-time temp-to-hire work assignment at Dittmer Recycling in Dubuque. The work hours were 3:00 a.m. to 3:00 p.m., Monday through Friday. Mr. Parker's supervisor in the assignment was Lisa Grobstick.

Mr. Parker last performed work in the assignment on Friday, July 3, 2015. Mr. Parker's cousin also worked for Express Services in an assignment at Dittmer Recycling at the same time as the claimant. On the morning of July 3, 2015, Mr. Parker's cousin quit her assignment at Dittmer Recycling. On that day, Mr. Parker left work early with his cousin, who was his ride that day. Mr. Parker lived in Dubuque, had his own means of transportation, and had a 10 to 15 minute commute from home to work. Mr. Parker told the supervisor that he needed to leave with his cousin. Ms. Grobstick notified Express Service that morning that Mr. Parker's cousin had quit and had compelled him to quit as well. Express Service documented that assignment as ended.

On July 3, Mr. Parker and Express Services were both aware that Dittmer Recycling would be on a temporary shutdown from July 8, 2015 through July 20, 2015. When Mr. Parker left early on July 3, he did so under the belief that he was next scheduled to work at 3:00 a.m. on

Monday, July 6, 2015. He also believed that he was still scheduled to work a partial day on Tuesday, July 7, 2015, from 3:00 a.m. to 10:00 a.m.

Mr. Parker did not appear for his shift on July 6, 2015. Instead he left a voicemail message for the employer at 11:15 p.m. on July 5. While the employer had a hard time understanding the message, Mr. Parker notified the employer in the message that his girlfriend had his car and that he would not be at work that day. If Mr. Parker needed to be absent from his assignment, the employer's policy required that he notify both Express Services and Dittmer Recycling prior to the scheduled start of the shift. Mr. Parker provided proper notice to Express Services concerning his need to be gone on July 6, but did not notify the client business.

Mr. Parker did not appear for his shift on July 7, 2015. Shortly before midnight on July 6, 2015, Mr. Parker left a message for the employer indicating that his grandmother has passed away and that he would not be at work on July 7, 2015. Mr. Parker also indicated in his message that his grandmother's funeral was set for July 10, 2015.

On the morning of July 7, 2015, Mr. Parker responded to a broadcast test message issued by the employer. The broadcast message indicated that the employer was seeking workers for assignments at A.Y. McDonald, a foundry in Dubuque. Mr. Parker telephoned the Express Services office on the morning of July 7, 2015 to express interest in an assignment at A.Y. McDonald. Mr. Parker was mindful that he was required to contact Express Services when an assignment came to an end to request placement in a new assignment. An Express Services representative advised Mr. Parker that she would add him to the list of potential temp employees to be referred for the assignment. The work was to start the next day. Mr. Parker was not selected for the work. During the following week, the employer referred Mr. Parker for an interview with St. Vincent de Paul. The interview led to an offer of an assignment and Mr. Parker began the new assignment on July 17, 2015.

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

Workforce Development rule 871 IAC 24.1(113) provides as follows:

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 laborsaving 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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

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.

Iowa Admin. Code r. 871-24.26(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 weight of the evidence in the record fails to establish that Mr. Parker voluntarily quit the assignment at Dittmer Recycling by leaving early on July 3, 2015. Mr. Parker testified that he notified the supervisor that he needed to leave work early that day with his cousin, but that he did not communicate a quit. The employer has presented insufficient evidence to rebut Mr. Parker's testimony and his subsequent conduct. The employer's conclusion that Mr. Parker had voluntarily quit in connection with the early departure on July 3 was based exclusively a text message from the Dittmer Recycling supervisor. The employer elected not to have that supervisor participate in the appeal hearing. Mr. Parker's testimony and the employer's testimony indicated that Mr. Parker took steps to notify the employer of his need to be absent from one or more shifts after the early departure on July 3. That conduct is inconsistent with an intention to voluntarily separate from the assignment or the employment. It appears the employer received erroneous and unreliable information from the Dittmer Supervisor. Though the evidence establishes absences on July 3 and 6, 2015 that would have been unexcused absences under the applicable law, the employer was aware of only one of those absences at the time the employer deemed the assignment done on July 3, 2015.

The weight of the evidence indicates that Mr. Parker made timely contact with the employer on July 7, 2015, regarding his interest in another assignment. As far as Mr. Parker knew, July 7, 2015 was to be his last day in the assignment at Dittmer Recycling.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Parker's separation from the temporary employment agency on or about July 3-7, 2015 was for good cause attributable to the temporary employment agency. Mr. Parker is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Parker.

**DECISION:**

The August 13, 2015, reference 02, decision is reversed. The claimant's separation from the temporary employment agency on or about July 3-7, 2015 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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