

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MAURICE D PARKER  
40 ASH DR  
MARION IA 52302

EXPRESS SERVICES INC  
PO BOX 720660  
OKLAHOMA CITY OK 73172-0660

Appeal Number: 05A-UI-00559-RT  
OC: 12-12-04 R: 03  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting  
Section 95.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Express Services, Inc., filed a timely appeal from an unemployment insurance decision dated January 7, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Maurice D. Parker. After due notice was issued, a telephone hearing was held on January 31, 2005, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Celeste Staebler, Staffing Consultant, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. The claimant was first hired and then assigned to his only assignment, Valley Apparel on August 2, 2004. The claimant did not satisfactorily complete the assignment. The claimant's last day of work was December 10, 2004 and the assignee, Valley Apparel, discharged the claimant from the assignment. The employer attempted to call the claimant on December 14, 2004, but could not reach him. Instead, the employer left a message for the claimant that he had been discharged from the assignment. The claimant had not returned to work for Valley Apparel since December 10, 2004, and never did so thereafter. On December 17, 2004, the claimant came to the employer's location to pick up his last check but did not inquire about other work and did not seek reassignment, although the employer had other assignments available. The claimant thereafter never returned to the employer and sought reassignment. The employer has a policy that an employee who completes an assignment for whatever reason must notify the employer within three working days and seek reassignment and then contact the employer each week. This rule is in the employer's handbook and the claimant signed a separate acknowledgment of the rule. The claimant did not comply with the rule because he never sought reassignment. Pursuant to his claim for unemployment insurance benefits filed effective December 12, 2004, the claimant has received no unemployment insurance benefits. Records show no weekly claims. Records also show that the claimant is disqualified as a result of a voluntary quit. This voluntary quit was a decision also dated January 7, 2005, reference 03, involving the employer but denying benefits to the claimant because he had failed to notify the temporary employment firm as appropriate. The claimant has not appealed this decision.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is not because he has received no such benefits.

871 IAC 24.23(11) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(11) Failure to report as directed to workforce development in response to the notice which was mailed to the claimant will result in the claimant being deemed not to meet the availability requirements.

The administrative law judge concludes that the claimant effectively voluntarily quit on December 17, 2004, when he failed to seek reassignment from the employer. The employer is a temporary employment firm. The claimant did not notify the temporary employment firm of the completion of his assignment and seek reassignment within three working days and therefore, is deemed to be a voluntary quit. The claimant did not participate in the hearing to demonstrate good cause for his failure. The claimant was advised of this requirement and read and signed a document that provides an explanation of this requirement. This was a separate document from any contract of employment. The employer was never aware whether the claimant even received the telephone message it left for the claimant. The claimant came in to the employer's

location, but only to pick up his last check, and did not seek reassignment or inquire about other work even though the employer had other assignments available. This does not qualify the claimant as seeking reassignment and notifying the employer of the completion of his assignment. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily effective December 17, 2004 when he failed to notify the employer of the completion of his assignment and seek reassignment within three working days. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant did not participate in the hearing and provide evidence of any reasons attributable to the employer for his quit. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

The administrative law judge notes that another decision by an authorized representative of Iowa Workforce Development dated January 7, 2005, reference 03, denied the claimant benefits because he failed to notify the employer herein, a temporary employment firm, as appropriate. The decision in this appeal now comports with that decision.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The administrative law judge concludes that the claimant has received no unemployment insurance benefits since separating from the employer herein on December 17, 2004 and filing for such benefits effective December 12, 2004. Since the claimant has received no unemployment insurance benefits, he is not overpaid any such benefits.

DECISION:

The representative's decision dated January 7, 2005, reference 01, is reversed. The claimant, Maurice D. Parker, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer when he failed to notify the employer of the completion of his assignment and seek reassignment. Since the claimant has received no unemployment insurance benefits, he is not overpaid any such benefits.

b/pjs