

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH A GATES

Claimant

APPEAL NO. 12A-UI-14661-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC

Employer

10/28/12

Claimant: Appellant (2)

Iowa Code Section 96.5(1)(j) – Temporary Employment Separation
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

Deborah Gates appealed from an unemployment insurance decision dated December 5, 2012, reference 01, that denied in connection with an October 26, 2012 separation from the above temporary employment firm. A telephone hearing was scheduled for January 17, 2013. Neither party responded to the hearing notice instructions to provide a telephone number for the hearing and neither party participated in the hearing. Based on the parties' failure to participate in the hearing, the administrative file, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

Decision on the record.

FINDINGS OF FACT:

Deborah Gates is the appellant in this matter. The parties were properly notified of the scheduled hearing on this appeal by notice mailed on December 19, 2012. Neither Ms. Gates nor the employer responded to the hearing notice instructions to provide a telephone number for the hearing. Neither party participated in the hearing and neither party requested a postponement of the hearing as required by the hearing notice. There is no evidence the hearing notice mailed to either party was returned by the postal service as undeliverable for any reason.

The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed. The administrative file documents indicate that the claimant completed an assignment on October 26, 2012. The documents do not indicate how the claimant was notified the assignment was coming to an end. The administrative file documents indicate that the claimant next made contact with the temporary employment agency on November 2, 2012, to indicate her availability for additional work. The administrative file documents indicate that the employer provided the claimant with "Welcome Brochure" that "listed" the claimant's obligation to contact the employer within three days of completing an assignment to request a further assignment.

There is no indication in the administrative file that the employer provided the claimant with an end-of-assignment policy statement that would comply with the requirements of Iowa Code section 96.5(1)(j).

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

The administrative law judge has carefully reviewed evidence in the record and concludes that the unemployment insurance decision previously entered in this case is incorrect and should be reversed. The administrative law judge notes that the lower decision erroneously referenced a three-day no-call/no-show and did not reference at all the fact that the claimant had completed a temporary employment work assignment or the allegation that the claimant had failed to contact the employer within three working days of the end of a work assignment.

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.

In the absence of proof of an end-of-assignment notification policy that complies with the statute, the employer is not entitled to the benefit of the statute to escape liability for benefits or to render the claimant ineligible for benefits. In the absence of a conforming policy, the claimant would have fulfilled her contract of hire upon completing the assignment and would have been under no obligation to seek further work through the temporary employment agency. The claimant's October 26, 2012 separation was for good cause attributable to the employer. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged.

Pursuant to the rule, the parties must make a written request to the administrative law judge that the hearing be reopened within 15 days after the mailing date of this decision. The written request should be mailed to the administrative law judge at the address listed at the beginning

of this decision and must explain the emergency or other good cause that prevented the appellant from participating in the hearing at its scheduled time.

DECISION:

The Agency representative's December 5, 2012, reference 01, decision is reversed. The claimant fulfilled the contract of hire by completing a temporary work assignment on October 26, 2012. The claimant's October 26, 2012 separation was for good cause attributable to the employer. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged.

This decision will become final unless a written request establishing good cause to reopen the record is made to the administrative law judge within 15 days of the date of this decision.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css