

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

BENNY M MONTGOMERY
Claimant

APPEAL NO. 18A-UI-06359-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 04/29/18
Claimant: Appellant (2)

Section 96.5-1-j – Separation from Temporary Employer

STATEMENT OF THE CASE:

Benny Montgomery (claimant) appealed a representative's May 31, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits due to his separation from work with Express Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 26, 2018. The claimant participated personally. The employer participated by Rob Sawyer, On Site Manager.

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. The claimant performed services from July 5, 2017, through April 13, 2018. The employer electronically signed a document for him indicating he was to contact the employer within forty-eight hours or three days, if mandated by state law, following the completion of an assignment to request placement in a new assignment. The document did not indicate the consequences of a failure to notify the employer. The claimant was not given a copy of the document.

On April 16, 2018, the claimant properly notified the onsite manager that he would be absent from work for a couple days due to a family funeral in Chicago, Illinois. The onsite manager told the claimant it was fine and that family was first. On April 17, 2018, when the claimant called in, the onsite manager was absent. The employer told the claimant he may be terminated. On April 18, 2018, the claimant returned to Iowa and called the employer. There was still no word from the onsite manager about whether the claimant had a job. On April 19, 2018, the employer told the claimant he was terminated. The claimant asked for another assignment. The employer said the onsite manager would call the claimant and the claimant should ask him about another assignment. The onsite manager never called the claimant.

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 day notice requirement and give the claimant a copy of that requirement. The notice requirement must be separate from the contract for hire. The claimant did not receive any notice. If he had received a copy, it would have been one signed by someone else. The document did not indicate three working days. The employer did not provide the claimant with the proper notice requirements and 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 31, 2018, decision (reference 01) is reversed. The claimant was separated from the employer for good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs