

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTIANA CHULU
Claimant

APPEAL 17R-UI-10514-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

**OC: 07/30/17
Claimant: Respondent (1R)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment Agency
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

Express Services, Inc. (employer) filed an appeal from the August 23, 2017, reference 01, unemployment insurance decision that allowed benefits based upon the determination Christiana Chulu (claimant) was laid off due to a lack of work. The parties were properly notified about a telephone hearing scheduled for September 19, 2017. The claimant did not register for that hearing and did not participate. The hearing proceeded with the employer. The administrative law judge issued a decision in appeal 17A-UI-08912-JCT finding the claimant was not eligible for benefits and that she had been overpaid unemployment insurance which she would have to repay.

The claimant appealed the decision to the Employment Appeal Board (EAB) who remanded the case for a new hearing. The EAB did not vacate the prior decision. However, after the new hearing was held, any decision that followed would vacate the prior decision.

After proper notice was given to the parties, a telephone hearing was held on November 1, 2017. The claimant participated personally. The employer participated through Staffing Consultant Claire Augspurger.

ISSUES:

Did the claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a temporary full-time Production Associate beginning on March 4,

2016 with the employer's client Helena Industries. She was separated from her assignment on Friday, July 28, 2017, when she was laid off due to a lack of work. The claimant contacted the employer on the following Tuesday to ask if work was available. She was told that work was not available. Additionally, while the employer had the claimant sign a policy stating she was required to contact it within three days of the end of an assignment when she was hired, the employer did not give the claimant a copy of that policy.

The administrative record reflects that the claimant has received unemployment benefits in the amount of \$3,115.00, since filing a claim with an effective date of July 31, 2017, for the seven weeks ending September 16, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was with good cause attributable to the employer. Benefits are allowed.

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.

Iowa Admin. Code r. 871-24.26(15) provides:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual has good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently acceptable means of communications. Working days means the normal days in which the employer is open for business.

The decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the situation. No request to continue the hearing was made and no written statement of the individual was offered. As the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment. Since she contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and there was no work available, no disqualification is imposed. Benefits are allowed and the lock placed on the claimant's account in September 2017 shall be removed.

As benefits are allowed, the claimant has not been overpaid unemployment insurance benefits and the employer's account is subject to charge.

DECISION:

The August 23, 2017, reference 01, unemployment insurance decision is affirmed. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided she is otherwise eligible, and the lock placed on the claimant's account in September 2017 shall be removed. Any benefits claimed and withheld on this basis shall be

paid. The claimant has not been overpaid unemployment insurance benefits and the employer's account is subject to charge.

REMAND:

The claimant's account is remanded to the Benefits Bureau for removal of the indefinite lock related to this separation that was entered on or about September 21, 2017.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn