

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN M HUTT
Claimant

APPEAL NO. 14A-UI-01346-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 12/22/13
Claimant: Respondent (2)

Section 96.5-1 – Voluntary quit
Section 96.5-1-j – Separation from Temporary Employment
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated January 28, 2014, reference 03, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on February 26, 2014, in Davenport, Iowa. The claimant failed to respond to the hearing notice and did not participate in the hearing. The employer participated by Tori Bronson, front office coordinator. The record consists of the testimony of Tori Bronson and Employer's Exhibits 1-3. Official notice is taken of agency records.

ISSUES:

Whether the claimant voluntarily quit without good cause attributable to the employer;
Whether the claimant has been overpaid unemployment insurance benefits; and
Whether the claimant should be required to repay unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a temporary staffing agency. The claimant accepted an assignment from February 27, 2013, to May 17, 2013. He was assigned to Helena Industries as a full time production worker. The employer ended the assignment on May 17, 2013. The claimant did not request another assignment until July 17, 2013. He signed a separate Iowa form, which stated that he would be considered a voluntary quit if he did not request another assignment within three working days.

The claimant has been paid three weeks of unemployment insurance benefits at a rate of \$231.00 per week for the weeks ending December 29, 2013, through January 11, 2014. The total amount received by the claimant was \$693.00. The employer participated in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant is not eligible for unemployment insurance benefits. He is considered a voluntary quit because he failed to request another assignment within three working days after the end of his assignment on May 17, 2013. The employer complied with Iowa law concerning voluntary quits on temporary assignments.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code Section 96.3-7-a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The decision of the representative dated January 28, 2014, reference 03, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The claimant has been overpaid \$693.00 in unemployment insurance benefits. The claimant is required to repay those benefits. The employer's account (207332) shall not be charged.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs