

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAWRENCE J HERBST**  
Claimant

**APPEAL NO. 10A-UI-00078-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 04/12/09**  
**Claimant: Appellant (2)**

Iowa Code Section 96.5(1) - Layoff  
Iowa Code Section 96.4(3) and 96.19(38) - Temporary and Partial Unemployment

**STATEMENT OF THE CASE:**

Lawrence Herbst filed a timely appeal from the December 29, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 12, 2010. Mr. Herbst participated. Matt Timmerman, owner, represented the employer. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant and wages reported by the claimant.

**ISSUE:**

Whether the claimant's December 29, 2009 separation from the employer was for good cause attributable to the employer.

Whether the claimant was partially unemployed or temporarily unemployed at any point since November 22, 2009, when he established an additional claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Lawrence Herbst commenced working for Express Services, Inc., on November 2, 2009 and has performed work in one full-time temporary work assignment. Mr. Herbst started the assignment on November 2, 2009. During the week that ended November 28, 2009, the employer had only 22 hours of work for Mr. Herbst. Mr. Herbst returned to full-time hours the week that ended December 5, 2009. During the weeks that ended December 12, 2009 and December 19, 2009, the employer had no work for Mr. Herbst in the assignment. During the weeks that ended December 26, 2009, the employer only had three days of work for Mr. Herbst. During the week that ended January 2, 2010, the employer had less than full-time work for Mr. Herbst. Mr. Herbst completed the assignment on December 29, 2009, at which time he was laid off.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code section 96.19(38)(b).

An individual shall be deemed *temporarily unemployed* if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed *due to a plant shutdown, vacation, inventory, lack of work or emergency* from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code section 96.19(38)(c).

Iowa Workforce Development rule 871 IAC 24.1(113) provides as follows:

24.1(113) Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

Iowa Code section 96.5-1 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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The evidence in the record indicates that Mr. Herbst was partially unemployed during the week that ended November 28, 2009 and was eligible for benefits for that week, provided he was otherwise eligible.

The evidence in the record indicates that Mr. Herbst was temporarily laid off during the weeks that ended December 12 and December 19, 2009. Mr. Herbst was eligible for unemployment insurance benefits during those two weeks, provided he was otherwise eligible.

The evidence in the record indicates that Mr. Herbst was partially unemployed during the weeks that ended December 26, 2009 and January 2, 2010, and was eligible for benefits for those weeks, provided he was otherwise eligible.

The weight of the evidence indicates that Mr. Herbst was laid off on or about December 29, 2009. Mr. Herbst's separation from the employment did not qualify him for unemployment insurance benefits. Mr. Herbst is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

#### **DECISION:**

The Agency representative's December 29, 2009, reference 01, decision is reversed. The claimant was partially unemployed during the week that ended November 28, 2009 and was eligible for benefits for that week, provided he was otherwise eligible. The claimant was temporarily laid off during the weeks that ended December 12 and December 19, 2009, and was eligible for unemployment insurance benefits during those two weeks, provided he was otherwise eligible. The claimant was partially unemployed during the weeks that ended December 26, 2009 and January 2, 2010, and was eligible for benefits for those weeks, provided he was otherwise eligible.

The claimant was laid off on or about December 29, 2009, and is eligible for benefits in connection with the separation from the employment, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs