

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**ROBERT MALLO  
PO BOX 175  
MASON CITY IA 50401**

**EXPRESS SERVICES INC  
P O BOX 720660  
OKLAHOMA CITY OK 73172**

**Appeal Number: 06A-UI-02696-BT  
OC: 01/01/06 R: 02  
Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1-j - Voluntary Quit of Temporary Employment  
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Express Services, Inc. (employer) appealed an unemployment insurance decision dated February 28, 2006, reference 05, which held that Robert Mallo (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 27, 2006. The claimant participated in the hearing. The employer participated through Andre Smith, Staffing Consultant; Holly Burtness, Front Desk Administrator; and owner Connie Cooper.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 4, 2005 and was most recently working as a full-time client service associate with Principal. His assignment with Principal began on December 5, 2005 and was completed on December 30, 2005. After that date, the claimant contacted the employer about an employment possibility in Des Moines but did not make himself available for work in Mason City, Iowa. He went into the employer's facility each week to pick up a friend's paycheck but did not inquire about any additional assignments or advise the employer he was available for further assignments.

The claimant filed a claim for unemployment insurance benefits effective January 1, 2006 and has received benefits after the separation from employment in the amount of \$3,490.00.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a. An individual who is a temporary employee of a temporary employment firm may be disqualified from receiving unemployment insurance benefits if the individual does not notify the temporary employment firm within three working days after ending a job assignment in an attempt to obtain another job assignment. To be disqualified from receiving benefits, at the time of hire the employer must advise the individual in writing of the three-day notification rule. The employer must also notify the individual that he may be disqualified from receiving unemployment insurance benefits if he fails to notify the employer. Iowa Code § 96.5-1-j.

The evidence indicates the claimant knew he was required to advise the employer of his availability after the completion of his assignment with Principal. The claimant did contact the employer about a job interview in Des Moines but the employer was not aware that he was available for work in the Mason City area. The claimant went into the office each week to pick up a friend's paycheck and the preponderance of the evidence tends to establish if he wanted work and was available for work, the employer would have been aware of it and he could have been placed on additional assignments. The claimant did not satisfy the requirements of Iowa Code § 96.5-1-j and is disqualified from receiving unemployment insurance benefits as of January 1, 2006.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment

compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated February 28, 2006, reference 05, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$3,490.00.

sdb/s