

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KIRA I WHITE
Claimant

EXPRESS SERVICES INC
Employer

APPEAL NO. 19A-UI-08742-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/26/19
Claimant: Respondent (1)

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
871 IA Admin. Code 24(10) – Employer Participation in Fact Finding

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated October 28, 2019, reference 05, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 2, 2019. Employer participated by Brianna Goodside. Claimant failed to respond to the hearing notice and did not participate.

ISSUES:

Did the claimant quit by not reporting for an additional work assignment within three business days of the end of the last assignment?

Whether claimant was overpaid benefits?

If claimant was overpaid benefits, should claimant repay benefits or should employer be charged due to employer's participation or lack thereof in fact finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was last assigned at Rain and Hail from March 25, 2019, and was separated from the assignment, but not the employment, on September 12, 2019. Claimant was notified that the work load was not great enough to keep her. The next day, employer notified claimant that she could work again the next Monday, September 17, at Rain and Hail. Claimant accepted, but did not show up for work on Monday. Claimant spoke with employer and stated she was having day care and phone issues. The next day, claimant went out to Rain and Hail to speak with employer's representative. Employer stated that there was not sufficient workload, and since claimant didn't show the previous day, she would not be considered at this assignment. Claimant then called employer next on September 23, 2019 asking if there were new placements available. Claimant did request placement in a new assignment pursuant to the employer's notification requirement but no further assignments were available at the time.

It does have a policy that complies with the specific terms of Iowa Code § 96.5(1)j , and claimant signed for and received this policy at the time of hire.

Claimant has received unemployment benefits in this matter.

Employer did substantially participate in fact finding through the information shared on the fact finding phone call.

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.

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(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment.

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 claimant went out to the job asking to remain employed, employer knew both at that time, and again on September 23, 2019, in accordance with company policy, that claimant wished for more assignments and none were available. Benefits are allowed, provided she is otherwise eligible.

The issue of overpayment of benefits is moot.

The issue of employer participation is moot.

DECISION:

The October 28, 2019, (reference 05) decision is affirmed. The claimant's separation from employment was attributable to the employer. The employer had adequate knowledge about the conclusion of the claimant's assignment and the request for more work but had no further work available at the time. Benefits are allowed, provided the claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn