

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

ESTEBAN CRUZ C MATA  
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DES MOINES IA 50316

EXPRESS SERVICE INC  
PO BOX 720660  
OKLAHOMA CITY OK 73172

Appeal Number: 04A-UI-02492-SWT  
OC 02/08/04 R 02  
Claimant: Respondent (1)

**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 96.5-2-a – Discharge  
Section 96.5-3-a - Failure to Accept Suitable Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 2, 2004, reference 01, that concluded the claimant was not disqualified based on being hired on a temporary basis. A telephone hearing was held on March 29, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Hazel Neil participated in the hearing on behalf of the employer. The parties agreed that the issue of whether the claimant refused suitable work could be considered and decided.

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant started working for the employer on September 3, 2003. His last

assignment was working for Ryder Trucking, which ended on January 30, 2004. The employer removed the claimant from the assignment at the request of Ryder Truck after a gasoline spill. The claimant was still an active employee for other assignments.

The claimant was informed and understood that under the employer's work rules, employees were to call the employer within 48 hours after the end of an assignment to remain available for future assignments. The claimant fulfilled this requirement.

The claimant filed a new claim for unemployment insurance benefits with an effective date of February 8, 2004. His average weekly wage from his highest quarter of wages in his base period was \$452.63 (\$11.32 per hour).

The employer offered the claimant an assignment working as a production worker at Helena Chemical Company on February 17, 2004. The rate of pay for the job was \$8.25 per hour. The claimant declined the offer because the rate of pay was too low. He was not offered any other jobs.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant is subject to disqualification for voluntarily quitting employment without good cause attributable to the employer.

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 subject to disqualification under Iowa Code Section 96.5-1-j. First, the language in the employer's work rules is not in substantial compliance with the requirements of the statute so that the claimant would be aware of its requirements. Second, the claimant satisfied the requirement of the statute in that the employer removed him from his last assignment and the employer did not offer him additional work at that point. He kept in contact with the employer after he was removed from the assignment. The claimant did not quit an indefinite or ongoing work assignment and therefore is not disqualified based on his separation from work with the employer. No discharge for misconduct has been proven.

The next issue is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

Iowa Code Section 96.5-3-a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

- (1) One hundred percent, if the work is offered during the first five weeks of unemployment.
- (2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
- (3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
- (4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

The work offered to the claimant was not suitable because the rate of pay was less than 100 percent of the average weekly wage from his highest quarter of wages in his base period of \$452.63 (\$11.32 per hour).

DECISION:

The unemployment insurance decision dated March 2, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits based on his separation from employment, if he is otherwise eligible. He is not subject to disqualification for failing to accept an offer of work.

saw/pjs