

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LANCE MARLETTE

Claimant

APPEAL NO. 07A-UI-08550-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC

Employer

**OC: 12/31/06 R: 03
Claimant: Appellant (2)**

Section 96.5-1-a – Voluntary Leaving - Other Employment
871 IAC 24.28(5) – Voluntary Quit Requalifications

STATEMENT OF THE CASE:

Lance Marlette (claimant) appealed an unemployment insurance decision dated August 29, 2007, reference 02, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Express Services, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 24, 2007. The claimant participated in the hearing. The employer participated through Lisa Franzmeier, Staffing Consultant. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a general laborer working full-time hours for this temporary employment agency from February 12, 2007 through July 19, 2007. He was taken off his assignment on July 16, 2007, due to poor attendance. The employer sent him on an interview on July 19, 2007 for a new assignment that was scheduled to start on July 23, 2007. After the interview, the claimant notified the employer he voluntarily quit because he had been hired by a previous employer. Continued work was available.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment to accept employment elsewhere.

Iowa Code section 96.5-1-a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

871 IAC 24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed and the employer's account shall not be charged.

DECISION:

The unemployment insurance decision dated August 29, 2007, reference 02, is reversed. The claimant voluntarily left his employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account shall not be charged.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw