

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAKEITHIA M ROWSER
Claimant

APPEAL NO. 17A-UI-03715-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 11/06/16
Claimant: Appellant (2)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

STATEMENT OF THE CASE:

Lakeithia Rowser filed a timely appeal from the March 31, 2017, reference 05, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Ms. Rowser had voluntarily quit on February 22, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on April 28, 2017. Ms. Rowser participated and presented additional testimony through Mariah Clark. Jim Cole represented the employer.

ISSUE:

Whether Ms. Rowser separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Express Services, Inc. is a temporary employment agency. Lakeithia Rowser began her employment with Express Services and performed work in a single, full-time, temp-to-hire work assignment at Omega Cabinets. Ms. Rowser began the assignment on January 9, 2017 and last appeared for work on February 22, 2017. The core hours in the assignment were 6:00 a.m. to 2:30 p.m., Monday through Friday. However, Omega Cabinets routinely required overtime work, which meant Ms. Rowser would frequently be required to work until 5:00 p.m. to 6:00 p.m. Express Services had disclosed the overtime requirement to Ms. Rowser when she accepted the assignment. Ms. Rowser worked beyond 2:30 p.m. on her first day in the assignment. Ms. Rowser's supervisor at Omega Cabinets was Jeff Borland. Ms. Rowser's primary contact at Express Services was Jim Cole, Staffing Consultant.

Before Ms. Rowser appeared for work on February 22, 2017, she had been absent on Monday, February 20, and Tuesday, February 21. Ms. Rowser's daughter had recently been sexually abused. Ms. Rowser needed the time away from work to care for her daughter to cooperate with investigation of the abuse. Ms. Rowser properly reported her need to be absent on both days. Express Services excused both absences and had cleared Ms. Rowser to return to the assignment on Wednesday, February 22, 2017. When Ms. Rowser returned to the assignment on February 22, she rode with her friend and coworker, Mariah Clark in Ms. Clark's vehicle. When they arrived for work, Ms. Rowser presented Mr. Borland with documentation regarding

her absence and her impending need for additional time in connection with the same matter. Mr. Borland met with Ms. Rowser privately and ended her assignment. Mr. Borland told Ms. Rowser she could return to the assignment after she had resolved the issue pertaining to her daughter and after she had been away from Omega Cabinets for six months.

After Mr. Borland ended the assignment, Ms. Rowser contacted Express Services the same day. Mr. Cole was not available that morning, so Ms. Rowser left a message for Mr. Cole. Mr. Cole called Ms. Borland back that evening. Ms. Rowser asked Mr. Cole whether there was another assignment available. Mr. Cole told Ms. Rowser there was no other assignment available at that time. Mr. Cole did not document the contact with Ms. Rowser and did not keep the correspondence he received from Omega Cabinets regarding the assignment coming to an end.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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. (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 issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The weight of the evidence in the record established that Ms. Rowser was discharged from assignment by Mr. Borland on February 22, 2017 in response to providing information to Mr. Borland regarding her personal circumstances and need for time off to address that issue. The discharge from the assignment was not based on misconduct. See Iowa Code section 96.5(2)(a) (regarding discharges for misconduct) and Iowa Administrative Code rule 871 IAC 24.32(1)(a) (defining misconduct). The weight of the evidence establishes that Ms. Rowser completed the assignment on February 22, 2017, when Mr. Borland discharged her from the assignment. The weight of the evidence also establishes that Ms. Rowser was in contact with Express Services that same day to request another assignment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Rowser's February 22, 2017 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Ms. Rowser is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The March 31, 2017, reference 05, decision is reversed. The claimant's February 22, 2017 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs