

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFF H MCCLERATH
Claimant

APPEAL NO: 13A-UI-01660-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 12/23/12
Claimant: Respondent (1)

Section 96.5-1-j – Separation from Temporary Employer
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Express Services (employer) appealed a representative's February 5, 2013 decision (reference 03) that concluded Jeff McLerath (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 11, 2013. The claimant participated personally. The employer participated by Brandi Whittenbaugh, Staffing Consultant.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services from January 20 through December 21, 2012. He signed a document on January 4, 2012, indicating that he was to contact the employer within three days following the completion of an assignment to request placement in a new assignment. The claimant was given a copy of the document which was part of the contract for hire. The claimant completed his last assignment on December 27, 2012, and sought reassignment from the employer. No work was available. The claimant was able and available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not separated from the employer for any disqualifying reason.

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.

Under the Iowa Code the employer must advise the claimant of the three-day notice requirement and give the claimant a copy of that requirement. The notice requirement cannot be a part of the contract for hire. The employer did not provide the claimant with the proper notice requirements and has, therefore, failed to satisfy the requirements of Iowa Code Section 96.5-1-j. Benefits are allowed.

There is no evidence that the claimant has not been able and available for work. He is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 5, 2013 decision (reference 03) is affirmed. The claimant was separated from the employer for good cause attributable to the employer. The claimant is able and available for work. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs