

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

IGNACIA URIBE
1715 FRANKLIN AVE
DES MOINES IA 50314

EXPRESS SERVICES INC
PO BOX 720660
OKLAHOMA CITY OK 73172

Appeal Number: 05A-UI-06476-JTT
OC: 05/22/05 R: 02
Claimant: Respondent (5)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

871 IAC 24.22(2)(j) – Reemployment at the End of a Negotiated Leave of Absence

STATEMENT OF THE CASE:

Express Services filed a timely appeal from the June 10, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 8, 2005. Ignacia Uribe participated with the assistance of Spanish-English interpreter Rosie Paramo-Ricoy, and presented additional testimony through Cassandra Plaza. The employer's representative was not available at the telephone number the employer had provided for the hearing and did not participate.

FINDINGS OF FACT:

Ignacia Uribe was employed full-time through Express Services temporary employment agency from November 29, 2004 until May 20, 2005. Ms. Uribe's one and only assignment through

Express Services was at Helena Chemical. Ms. Uribe worked Monday through Friday, and some Saturdays.

On May 3, 2005, Cassandra Plaza contacted “BJ” Butler at Express Services on behalf of Ms. Uribe. Ms. Uribe is Ms. Plaza’s mother. Ms. Uribe does not speak English. The purpose of the telephone call was to make Ms. Butler aware that Ms. Uribe’s elderly mother was very ill and that Ms. Uribe needed to travel to Mexico on May 5 to be with her mother for two weeks. Ms. Plaza asked Ms. Butler to contact Helena Chemical to let them know Ms. Uribe’s circumstances. Ms. Butler indicated that the Helena Chemical assignment was scheduled to end in approximately a month, at which time the temporary employees would be laid off until August. Ms. Butler told Ms. Plaza, “I understand, that’s fine.” Ms. Butler indicated that she would contact Helena Chemical and get back to Ms. Plaza. Ms. Plaza did not receive a return telephone call or answering machine message from Ms. Butler.

On May 5, 2005, Ms. Uribe departed for Mexico with the belief that she would be able to return to her assignment in two weeks. Ms. Uribe’s mother was hospitalized for diabetes and heart disease.

On May 20, 2005, Ms. Uribe went to Express Services to collect her paycheck and to let Ms. Butler know she was available to return to her assignment. Ms. Uribe had been away from her assignment for ten business days. At that time, Ms. Butler informed Ms. Uribe that the assignment was no longer available and that there were no other assignments available for Ms. Uribe.

REASONING AND CONCLUSIONS OF LAW:

The first question for the administrative law judge is whether the evidence in the record establishes that Ms. Uribe quit the employment. It does not.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). The evidence in the record fails to establish that Ms. Uribe intended to quit the assignment at Helena Chemical or sever her relationship with Express Services. Instead, the evidence indicates that Ms. Uribe contacted the employer to get permission for a two-week leave of absence and reasonably concluded that her position would be waiting for her when she returned. Ms. Uribe did in fact return after two weeks and presented herself at Express Services to notify the agency that she was ready to return to work. The administrative law judge concludes that Ms. Uribe did not quit the assignment at Helena or the employment at Express Services. The administrative law judge further concludes that Ms. Uribe was on an approved leave of absence.

A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, if the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits. 871 IAC 24.22(j)(2).

The evidence in the record establishes that Ms. Uribe attempted to return to the employment at the end of an approved two-week leave of absence and Express Services failed to re-employ her at that time. Based on the evidence in the record and application of the law cited above, the administrative law judge concludes that Ms. Uribe was laid-off by the employer. Accordingly, Ms. Uribe is eligible for benefits, provided she is otherwise eligible.

DECISION:

The Agency representative's decision dated June 10, 2005, reference 01, is modified as follows. The claimant neither quit nor was discharged from the employment. The employer failed to re-employ the claimant after an approved leave of absence. The claimant is considered laid-off and is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

jt/sc