

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD L CLEMONS
Claimant

APPEAL NO. 06A-UI-11126-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

**OC: 10/08/06 R: 02
Claimant: Respondent (5)**

Section 96.5-1-j – Separation from Temporary Employer
Section 96.5-3-a – Suitable Work

STATEMENT OF THE CASE:

Express Services (employer) appealed a representative's November 13, 2006 decision (reference 01) that concluded Todd Clemons (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 5, 2006. The claimant participated personally. The employer participated by Andre Smith, Staffing Consultant.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services from May 18 through October 4, 2006. He signed a document on May 17, 2006, 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 completed his last assignment at Graham Manufacturing on October 4, 2006. The claimant earned \$9.00 per hour for 40 hours per week. He sought reassignment from the employer on October 6, 2006. Work was available with a different employer at the same hourly wage, but the claimant did not accept the offer of work.

The claimant filed a new claim for unemployment insurance benefits with an effective date of October 8, 2006. The claimant's average weekly wage during his highest quarter of wages was \$851.96.

On October 19, 2006, the employer offered the claimant work at Graham Manufacturing. The claimant accepted the work and remains at work at Graham Manufacturing.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds the claimant was not separated from the employer for any disqualifying reason. As an employee of a temporary service, the claimant was required to request reassignment after the completion of his last assignment.

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 did request reassignment and has satisfied the requirements of the statute. He is eligible to receive unemployment insurance benefits.

Additionally the administrative law judge concludes the claimant did not refuse an offer of suitable work.

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 was offered within five weeks of the claimant's unemployment and was required to provide the claimant wages 100 percent of those paid to the claimant during the highest quarter of his base period. The evidence fails to establish that the claimant would have received at least 100 percent of his average weekly wages during his highest quarter of earnings. Based on the factors found in Iowa Code section 96.5-3-a, the work offered to the claimant was not suitable work. The claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The representative's November 13, 2006 decision (reference 01) is modified with no effect. The claimant is eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw