

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

JERMAINE J WILSON
5445 – 1ST AVE SW
CEDAR RAPIDS IA 52405

EXPRESS SERVICES INC
PO BOX 720660
OKLAHOMA CITY OK 73172

Appeal Number: 05A-UI-01929-RT
OC: 01-09-05 R: 03
Claimant: Respondent (2)

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)

Section 96.5-1 – Voluntary Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Express Services, Inc., filed a timely appeal from an unemployment insurance decision dated February 18, 2005, reference 02, allowing unemployment insurance benefits to the claimant, Jermaine J. Wilson. After due notice was issued, a telephone hearing was held on March 10, 2005, with the claimant participating. Brian Fuller, Franchise Owner, and Heather Wickman, Staffing Consultant, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. The claimant began employment on August 17, 2004 when he was assigned to Valley Apparel. That assignment was long-term "temp-to-hire." However, the claimant did not satisfactorily complete that assignment. On September 10, 2004, the claimant was either discharged or laid off from Valley Apparel. Whether the claimant notified the employer, Express Services, Inc., is uncertain but the claimant never sought reassignment from the employer. The employer had other assignments for the claimant but the claimant never sought such assignments. The employer has a policy, an acknowledgement for which the claimant signed and for which he received a separate copy, requiring that he notify the employer within three working days of the completion of an assignment and that he seek reassignment. The claimant did not do so.

The claimant is disqualified to receive unemployment insurance benefits as a result of a disqualifying separation on August 17, 2004, from a prior employer, Wal-Mart Stores, Inc., by decision dated February 18, 2005, reference 03. The claimant has not requalified since that disqualifying separation. The claimant has only earned \$1,069.69 and that was from the employer herein in the third quarter of 2004 and this does not exceed ten times his weekly benefit amount of \$237.00 or \$2,370.00. A prior decision dated February 24, 2005, at reference 07, indicating that the claimant had, in fact, requalified for unemployment insurance benefits was amended by a decision dated March 11, 2005, at reference 08, indicating that the claimant has not requalified to receive unemployment insurance benefits. Pursuant to his claim for unemployment insurance benefits filed effective January 9, 2005, the claimant has received unemployment insurance benefits in the amount of \$1,659.00 as follows: \$237.00 per week for seven weeks from benefit week ending January 15, 2005 to benefit week ending February 26, 2005. This amount will now be overpaid since the claimant had not requalified following the disqualifying separation noted above. For benefit week ending March 5, 2005, the claimant is shown as being disqualified as the result of a voluntary quit.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is.

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 first issue to be resolved is the character of the separation. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant effectively voluntarily left his employment with the employer and that this occurred on September 10, 2004. The employer's witness, Brian Fuller, Franchise Owner, credibly testified that the employer is a temporary employment agency and that the claimant was assigned to Valley Apparel for a long-term assignment, "temp-to-hire," beginning August 17, 2004. He further testified that the claimant did not satisfactorily complete that assignment. He testified the claimant was basically discharged by Valley Apparel but not by the employer herein. The claimant testified that he was laid off from Valley Apparel for a lack of work but agrees that he stopped working for Valley Apparel on September 10, 2004. When the claimant was hired by the employer and assigned to Valley Apparel, he signed an acknowledgement and obtained a separate copy of a policy that requires that an employee notify the employer, a temporary employment agency, within three working days after the completion of an assignment and seek reassignment. There is not a preponderance of the evidence that the claimant actually notified the employer of the completion of his employment assignment and there is no evidence that the claimant sought reassignment. Even the claimant concedes that he did not seek reassignment. Such a failure is deemed a voluntary quit. Whether the claimant was laid off or discharged from his assignment is irrelevant to the issue as to whether the claimant is considered to have quit his employment with the employer herein, a temporary employment firm. The claimant was employed by a temporary employment firm and his assignment was completed, for whatever reason, but the claimant failed to notify the firm of the completion of an assignment and failed to seek reassignment. Mr. Fuller credibly testified that there were other assignments available to the claimant. The claimant initially testified that he was not aware of the policy noted above but conceded that he got a copy of it. Accordingly, the administrative law judge concludes that the claimant voluntarily left his employment when he failed to notify the temporary employment firm of the completion of his assignment and failed further to seek reassignment despite employer's rules to the contrary; rules of which the claimant was advised in writing and for which he signed an

acknowledgement. The issue then becomes whether the claimant left his employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. The claimant really provided no reasons attributable to the employer for his voluntary quit or his failure to seek reassignment from the employer. The claimant may well have been dissatisfied with his work environment but this is not good cause attributable to the employer for his quit. See 871 IAC 24.25(21). There is no evidence that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. There is also no evidence that the claimant ever expressed any concerns to the employer about his working conditions or indicated or announced an intention to quit if any of his concerns were not addressed. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

The administrative law judge notes that the claimant is also disqualified as the result of a disqualifying separation on August 17, 2004 from a prior employer, Wal-Mart Stores, Inc. The claimant has not requalified to receive unemployment insurance benefits following this disqualifying separation, as set out in the findings of fact. Even if the separation herein would not have been disqualifying, the claimant would still not be entitled to receive unemployment insurance benefits because of the prior disqualifying separation from which he is not requalified. Even claimant conceded that he had no other earnings after his disqualifying separation from Wal-Mart Stores, Inc., except for \$1,069.69 from the employer herein. This has not nearly enough to requalify the claimant. The claimant would have had to have earned in excess of \$2,370.00 which is ten times his weekly benefit amount of \$237.00, in order to requalify following the disqualifying separation from Wal-Mart Stores, Inc. The claimant has not done so.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,659.00 since separating from the employer herein on or about September 10, 2004 and filing for such benefits effective January 9, 2005. The

administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law. The administrative law judge concludes that even if the separation herein from this employer, Express Services, Inc., was not disqualifying, the claimant would still be overpaid such benefits as the result of his disqualifying separation from a prior employer, Wal-Mart Stores, Inc.

DECISION:

The representative's decision of February 18, 2005, reference 02, is reversed. The claimant, Jermaine J. Wilson, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer. He has been overpaid unemployment insurance benefits in the amount of \$1,659.00.

pjs/sc