

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GINA A BROOKS

Claimant

APPEAL NO. 16A-UI-08177-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC

Employer

OC: 06/19/16

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 18, 2016, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged, based on an agency conclusion that the claimant's June 17, 2016 separation was for good cause attributable to the employer. After due notice was issued, a hearing was held on August 15, 2016. Claimant Gina Brooks participated. Valerie Hefel represented the employer. Exhibits One and Two were received into evidence. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant.

ISSUE:

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Express Services is a temporary employment agency and has a branch office in Dubuque. Claimant Gina Brooks began her employment relationship with Express Services in 2014 and has performed work for the employer in a series of temporary work assignments. Ms. Brooks accepted work in a one-day housekeeping assignment at Country Inn and Suites. Ms. Brooks was to work 9:00 a.m. to 3:00 p.m. Ms. Brooks suffers from scoliosis, curvature of the spine. Ms. Brooks accepted the one-day assignment at Country Inn and Suites under the belief that she could perform housekeeping duties. About 20 minutes after Ms. Brooks started the assignment, she left the assignment early due to illness. The housekeeping duties required repetitive bending. Ms. Brooks became light-headed and had to sit down. Ms. Brooks immediately contacted an Express Services staffing consultant regarding her physical inability to perform the work in the housekeeping assignment. The parties next had contact on June 18, 2016, when the employer left a message at 3:43 p.m. for an assignment that was to start at 5:00 p.m. that same day.

At the start of Ms. Brooks' employment, the employer had her execute an End-of-Assignment Reporting Requirements document. The document obligated Ms. Brooks to contact the employer within three working days from the end of an assignment or the employer would consider Ms. Brooks to have voluntarily quit. The document obligated Ms. Brooks thereafter to call the employer at least once a week to let the employer know that she was available for assignments. The document did not mention any unemployment insurance consequences that might result from failure to contact the employer at the end of an assignment or being deemed a voluntary quit.

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 evidence in the record establishes a June 17, 2016 separation that was for good cause attributable to the employer. On June 17, 2016, Ms. Brooks was placed in a one-day assignment. Ms. Brooks left early due to illness. The absence due to illness and properly reported would not constitute misconduct or a voluntary quit. Ms. Brooks was in contact with the employer the same day. The employer's policy does not conform to the requirements of the statute because it is silent on potential unemployment insurance consequences. Accordingly, Ms. Brooks fulfilled her obligation to the employer on June 17, 2016 and was not obligated under the law to seek further assignments from the employer.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant's June 17, 2016 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.

DECISION:

The July 18, 2016, reference 01, decision is affirmed. The claimant's June 17, 2016 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/pjs