

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADLEY E SILLS
Claimant

APPEAL NO. 08O-UI-05707-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES
Employer

**OC: 03/09/08 R: 02
Claimant: Respondent (1)**

Section 96.5-1-j – Temporary Employment

STATEMENT OF THE CASE:

Express Services (employer) appealed a representative's April 9, 2008 decision (reference 03) that concluded Bradley E. Sills (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's employment separation was for non-disqualifying reasons. A hearing was held on April 30, 2008, before another administrative law judge. The employer participated in the hearing, but the claimant did not. Based on evidence presented, on May 1 the administrative law judge decided the claimant voluntarily quit his employment for reasons that did not qualify him to receive benefits and disqualified him from receiving benefits as of March 9, 2008. The administrative law judge also concluded that the claimant had been overpaid \$1,659.00 in benefits he had received since March 9, 2008.

The claimant appealed the May 1, 2008 decision. The Employment Appeal Board remanded the matter to the Appeals Section for a new hearing. After hearing notices were again mailed to the parties' last-known addresses of record, a telephone hearing was held on July 7, 2008. Although the claimant again did not respond to the hearing notice by contacting the Appeals Section prior to the hearing, the phone number of record was called. A message was left for the claimant to contact the Appeals Section immediately if he wanted to participate in the hearing. The claimant did not respond to the message left for him on July 7.

The employer responded to the hearing notice and provided a phone number in which to contact the employer's witness/representative. This number was called and the call was immediately picked by an answering machine. A message was also left for the employer to contact the Appeals Section immediately. The employer did not contact the Appeals Section until more than two hours later. Based on the reasons for not being available for the hearing, the employer's witness/representative learned the hearing would not be reopened. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant applied to work for the employer's clients on June 11, 2007. On June 11, 2007, the claimant signed paperwork indicating he understood he was required to contact the employer within three days of completing a job assignment. The paperwork informed the claimant that if he did not contact the employer within three days, unemployment insurance benefits could be jeopardized.

The employer assigned the claimant to a job as a laborer on June 18, 2007. On October 5, 2007, the employer contacted the claimant to let him know his assignment had been completed. The employer did not offer the claimant another job on October 5.

On October 8, 2007, the claimant contacted the employer and reported that he was in the hospital. Although the employer asked the claimant to contact the employer after he had been released from the hospital, the claimant did not do this. The employer received information that the claimant was still in the hospital on October 10, 2008.

The employer properly responded to the hearing notice by contacting the Appeals Section prior to the hearing and providing a phone number in which to contact the employer's witness/representative. The employer did not respond to the July 7 noon message for over two hours. The employer asserted the phone call had been misrouted by another employee. Even though parties are told to contact the Appeals Section if they have not received a phone call within five minutes of a scheduled hearing, the employer's witness asserted she did not immediately contact the Appeals Section because she assumed she was not going to be called for the hearing.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

While the employer's assertion that someone in the employer's office misrouted the administrative law judge's call to the witness at noon may be true, this problem was an internal problem created by the employer. The employer had the responsibility to provide a phone number at which the employer's witness could be contacted at noon. For unknown reasons, the employer's witness did not get the phone message to contact the Appeals Section for over two hours. Based on the employer's failure to provide a phone number at which the employer's witness/representative could be contacted for the hearing and the employer's failure to take reasonable steps to participate in the hearing, the employer did not establish good cause to reopen the hearing.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts establish the claimant worked for a temporary employment firm and the claimant received information that he was required to contact the employer within three days of completing an assignment. On October 5, 2008, the employer informed the claimant he was no longer needed at the job he had been assigned to work.

An individual who is a temporary employee of a temporary employment firm may be disqualified from receiving unemployment insurance benefits if the individual does not notify the temporary employment firm within three working days after completing the job assignment in an attempt to obtain another job assignment. To be disqualified from receiving benefits, at the time of hire the employer must advise the individual in writing of the three-day notification rule and that the individual may be disqualified from receiving unemployment insurance benefits if he fails to notify the employer. Iowa Code § 96.5-1-j. The record indicates that at the time of hire, the employer informed the claimant about the three-day notification rule. The claimant contacted the employer within three days of learning his assignment had ended. When the claimant contacted the employer, he was not able to work because he was hospitalized. The record does not establish when the claimant was released from the hospital or was able to and available for work. The record, however, indicates the claimant worked and earned wages for another employer during the fourth quarter of 2007. Since the claimant contacted the employer within three days, he satisfied the technical requirements of Iowa Code § 96.5-1-j. The fact the claimant was hospitalized and unable to work does not transform a non-disqualifying employment separation (completion of a job assignment) to a disqualifying employment separation (voluntarily quit situation). Based on the administrative record, the claimant became unemployed as of October 5, 2007 for non-disqualifying reasons. As of March 9, 2008, the claimant is qualified to receive benefits.

The previously imposed overpayment of \$1,659.00 no longer exists as a result of this decision.

DECISION:

The employer did not establish good cause to reopen the hearing. The representative's April 9, 2008 decision (reference 03) is affirmed. The claimant became unemployed as of October 5, 2007, for non-disqualifying reasons. Therefore, as of March 9, 2008, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw