

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TYRONE B JEFFERSON
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 19A-UI-04732-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/05/19
Claimant: Respondent (1)**

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On June 11, 2019, the employer filed an appeal from the June 6, 2019, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 8, 2019. Claimant participated and testified. Employer participated through Employment Specialist Sam Bandy.

ISSUES:

Did the claimant quit by not reporting for an additional work assignment within three business days of the end of the last assignment?
Has the claimant been overpaid benefits?
Should benefits be repaid by claimant due to the employer's participation in the fact finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time last assigned at Brimm Ridder Sportswear in the receiving department. The assignment began on January 9, 2019 and ended on May 1, 2019 when claimant resigned from the assignment, but not the employment. Prior to May 1, 2019, claimant had notified the employer that he was not being allowed to take lunch or other breaks on his assignment at Brimm Ridder. After several complaints one of the employer's representatives, Ashley, suggested claimant give his 48-hour notice, as required by the employer's policies, and leave the assignment. On April 29, 2019, claimant followed that advice and gave notice that he was quitting the assignment. The employer's records show Ashley told claimant the employer would mark him as available for work and notify him if other assignments became available. The employer's policies, which claimant did not recall receiving a copy of, also required claimant to call in weekly to ask about work. The employer did not hear from claimant again until the beginning of July.

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 5, 2019. The claimant filed for and received a total of \$1,626.00 in unemployment

insurance benefits for the weeks between May 5 and June 29, 2019. Both the employer and the claimant participated in a fact finding interview regarding the separation on May 29, 2019. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was with good cause attributable to the employer.

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 lettered paragraph:

(a) "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.

(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 § 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 § 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.

Here, the employer's policy requires employees to call in weekly to ask about additional assignments. This policy does not comply with the specific terms of Iowa Code § 96.5(1)j. The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for and seeking work at the end of the temporary assignment. The claimant notified his employer that he was ending the assignment two days ahead of his final day. Additionally, Ashley's assertion that the employer would look for other work for claimant infers there was no further work available at the time. Accordingly, claimant was reasonable to opt to look for work elsewhere or to report for additional work when he did. Benefits are allowed, provided claimant is otherwise eligible. As benefits are allowed, the issues of overpayment and participation are moot.

DECISION:

The June 6, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. The issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs