

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CHRISTAL L BROOKS
Claimant

APPEAL NO. 19A-UI-04559-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 05/05/19
Claimant: Respondent (4)

Iowa Code Section 96.4(3) – Able & Available

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

Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 29, 2019, reference 02, decision that allowed benefits to the claimant effective May 5, 2019, provided the claimant was otherwise eligible, based on the deputy's conclusion that the claimant was able to work, available for work, but temporarily laid off. After due notice was issued, a hearing was held on July 15, 2019. Claimant Christal Brooks did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Sam Bandy represented the employer. Department Exhibits D-1 through D-3, D-5, D-6 and D-9 through D-11 were received into evidence.

ISSUES:

Whether there was a separation from temporary employment agency following a March 20, 2019 assignment and, if so, whether that separation disqualified the claimant for benefits or relieves the employer's account of liability for benefits.

Whether the claimant has been able to work and available for work since May 5, 2019.

Whether the claimant has been overpaid benefits.

Whether the claimant must repay overpaid benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Express Services, Inc. is a temporary employment agency. Christal Brooks commenced her employment with Express Services in September 2018. At the start of the employment, the employer had Ms. Brooks sign to acknowledge an employee handbook that contained a provision about contacting the employer upon completion of an assignment. The employer did

not have Ms. Brooks sign a stand-alone policy document requiring Ms. Brooks to contact the employer within three working days of completing an assignment or be deemed to have voluntarily quit and risk being disqualified for unemployment insurance benefits.

On March 20, 2019, Ms. Brooks completed a one-day assignment at Infinity. Ms. Brooks next made contact with the employer on March 28, 2019 and requested additional work at that time. The employer did not have an additional assignment for Ms. Brooks at that time.

Express Services did not have a new work assignment for Ms. Brooks until July 1, 2019. On July 1, 2019, Ms. Brooks began a full-time temporary work assignment at Cedar Wood Hills Apartments. Ms. Brooks' work hours in the new assignment are 9:00 a.m. to 5:00 p.m., Monday through Friday.

Ms. Brooks established an original claim for benefits that was effective May 5, 2019. Ms. Brooks made weekly claims for each of the nine weeks between May 5, 2019 and July 6, 2019. Ms. Brooks received \$248.00 in benefits for each of those weeks for a total benefit amount of \$2,232.00. For each week of the claim, Ms. Brooks reported making two or more employer contacts. Ms. Brooks maintained contact with Express Services during the period of her claim. It is unclear what other employer contacts Ms. Brooks may have had during the period of her claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 March 20, 2019 separation that was for good cause attributable to the temporary employment agency. The employer did not comply with the requirements of Iowa Code section 96.5(1)(j) and, therefore, the statute does not apply to Ms. Brooks' employment with Express Services. As of March 20, 2019, Ms. Brooks had fulfilled the contract of hire by completing the one-day assignment. Ms. Brooks was not obligated to seek further work through the employer as a condition of being eligible for unemployment insurance benefits. Based on the separation, Ms. Brooks is eligible for benefits, provided she meets all other eligibility requirements and the employer's account may be charged.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Ms. Brooks did not participate in the appeal hearing and did not present any evidence to meet her burden of proving that she has been able to work and available for work during each week of her claim. For that reason, benefits are denied effective May 5, 2019. The evidence further indicates that as of July 1, 2019, Ms. Brooks was again working full-time for the employer. The evidence indicates that Ms. Brooks was working full-time for the employer as of July 1, 2019, which by itself would disqualify her for unemployment insurance benefits, effective the week that started June 30, 2019.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recovery the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits.

Ms. Brooks received \$2,232.00 in benefits for the nine weeks between May 5, 2019 and July 6, 2019, but the availability determination in this decision disqualifies her for those benefits. Accordingly, the \$2,232.00 in benefits that Ms. Brooks received for the nine weeks between May 5, 2019 and July 6, 2019 constitute an overpayment of benefits. Ms. Brooks must repay the overpaid benefits.

DECISION:

The May 29, 2019, reference 02, decision is modified as follows. The claimant separated from the temporary employment agency on March 20, 2019 for good cause attributable to the employer. Based on the separation, the claimant would be eligible for benefits provided she meets all other eligibility requirements and the employer's account may be assessed for benefits.

The claimant has not demonstrated that she was available for work within the meaning of the law during the period beginning May 5, 2019. Accordingly, benefits are denied effective May 5, 2019. Based on the availability determination, the claimant is overpaid \$2,232.00 in benefits for nine weeks between May 5, 2019 and July 6, 2019. The claimant must repay the overpaid benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs