

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**JATAUN WILSON**

Claimant,

and

**L A LEASING INC**

Employer.

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**HEARING NUMBER: 11B-UI-00931**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**N O T I C E**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 871 IAC 24.26(19)**

**D E C I S I O N**

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The claimant, Jataun Wilson, worked for LA Leasing, Inc./Sedona Staffing. At the start of her hire, the employer provided the claimant with an 'availability statement', which was apart from the employer's other policies and procedures documentation. (Tr. 6) The 'availability statement' provided that the claimant was to report back to the employer within three days after completion of any given assignment. The claimant signed in acknowledgement of this document. (Tr. 6)

The claimant was assigned to Nordstrom's Distributing on a regular basis. (Tr. 8) If she was assigned to Nordstrom's on a Monday, she would sign in her availability for that week. (Tr. 7, 9) Ms. Wilson usually called in to Sedona about twice a week; if her Nordstrom's assignment concluded on a Wednesday, she would call the employer on Wednesday or Thursday seeking further assignment. (Tr. 9)

On May 31, 2010 (Monday), the claimant started an assignment at Nordstrom's that ended on June 4, 2010 (Friday). (Tr. 5, 7) She contacted the temporary agency, as usual, and spoke with Beth who was the front desk receptionist to inquire about any other assignments. (Tr. 7-8) She later contacted Sedona, speaking to Joe who told her that nothing was available and that the agency was only looking for accountants. (Tr. 8) The employer did not hear from Ms. Wilson, again, until July 5th, 2010. (Tr. 11)

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)"j" provides:

An individual shall be disqualified for benefits: *Voluntary Quitting*. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

j. The individual is a temporary employee of 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.* (Emphasis added.)

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.

There is no dispute that Ms. Wilson was assigned to work at Nordstrom's from May 31<sup>st</sup> through June 4<sup>th</sup> when her assignment ended. The parties, however, provided differing accounts as to whether the claimant contacted the agency within three days of her assignment's end. According to Ms. Wilson, she contacted the agency as she always did, i.e., the beginning of the week to see if Nordstrom's needed her, and on Wednesday or Thursday, if her assignment there ended. Since this last Nordstrom's assignment ended on June 4<sup>th</sup>, a Friday, it would have been within the claimant's routine to call the employer the following Monday to seek further assignment. The employer did not deny that Ms. Wilson routinely called in twice a week. Although the employer denied that she ever contacted the employer after the June 4<sup>th</sup>, the employer failed to provide either Beth or Joe to whom the claimant testified she spoke to that week who could provide firsthand testimony to refute her testimony.

We find the claimant's testimony more credible than not that she did contact the agency within three days after her assignment ended in accordance with the availability statement. The fact that she contacted the agency, again, several weeks later on July 5<sup>th</sup> seeking further assignment is not probative that she had not called within the three days after June 4<sup>th</sup>. Rather, her calling in on July 5<sup>th</sup> establishes that the claimant did not quit her employment, but was discharged for which the issue of misconduct must be resolved.

871 IAC 24.32(4) provides:

*Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In the cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

This record contains no evidence to support that the claimant committed any act that could be construed as disqualifying misconduct.

**DECISION:**

The administrative law judge's decision dated March 15, 2011 is **REVERSED**. The claimant was discharged for no disqualifying reason. Accordingly, she is allowed benefits provided she is otherwise eligible.

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John A. Peno

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Elizabeth L. Seiser

**DISSENTING OPINION OF MONIQUE F. KUESTER:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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Monique F. Kuester

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