

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

DENISE WITT

Claimant,

and

L A LEASING INC

Employer.

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HEARING NUMBER: 11B-UI-14435

**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: 96.5-1-J

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 majority of the Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Denise Witt (Claimant) worked for L A Leasing (Employer) from April 7, 2010 until September 10, 2010 assigned to the client employer, Iowa At Work. (Tran at p. 3; p. 6). The Claimant's assignment ended on September 10, 2010. (Tran at p. 3; p. 5). The Employer was aware that the assignment had ended. (Tran at p. 6). The Employer had no contact from the Claimant since her assignment at Iowa at Work came to an end. (Tran at p. 3-4). The Employer has not proven that it complied with the requirements of Iowa Code §96.5(1)“j.”

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(1) states:

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.

Iowa Code section 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. 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.

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.

For the purposes of this paragraph:

(1) "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.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

The law requires that Employer advise the employee “in writing of the notification requirement.” The method of notification is that the employee, at the time of hiring on with the temporary employment firm, must read and sign a “clear and concise explanation of the notification requirement and the consequences of a failure to notify.” Iowa Code §95.5(1)(j). Further “a copy of the signed document shall be provided to the temporary employee...” Iowa Code §95.5(1)(j). Since the Employer had the burden of proving disqualification the Employer had the burden of proving that a quit rather than a discharge has taken place. This means the Employer must prove compliance with the requirements of Iowa Code §96.5(1)(j). *See* Iowa Code §96.6(2)(assigning burden to Claimant only on paragraphs “a” through “h”).

The Claimant denied seeing, much less reading and signing, a document notifying her of the requirement to call in and seek reassignment within 3 days. The Employer testified that the Claimant signed for the notice on September 17, 2009. But the Employer also testified that the Claimant started as an employee on April 7, 2010 and had only one assignment. The Claimant does not recall signing any such document. (Tran at p. 6). The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We have found the Claimant’s testimony credible. Given this we cannot find that the Employer has proven that the Claimant was indeed required to read and sign the notice. This by itself is sufficient to defeat compliance with Iowa Code §95.5(1)(j).

Second, the Employer has failed to prove that a copy of any signed document was provided to the Claimant. The Claimant testified she was never given copies. (Tran at p. 6). Even the Employer testified only that copies were available – and apparently not the “signed” copy. This is not proof that signed copies were actually “provided” as stated in the law. (Tran at p. 7). This by itself is sufficient to defeat compliance with Iowa Code §95.5(1)(j).

The greater weight of the evidence fails to demonstrate compliance with Iowa Code §95.5(1)(j). This being the case, the failure to seek reassignment within 3 days cannot be deemed to be a quit under that paragraph. No quit is proven and benefits are allowed.

DECISION:

The administrative law judge’s decision dated January 13, 2011 is **REVERSED**. The Employment Appeal Board concludes that the claimant was not separated from employment in a manner that would disqualify the Claimant from benefits. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

John A. Peno

Elizabeth L. Seiser

DISSENTING OPINION OF MONIQUE 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.

Monique F. Kuester

RRA/kk