

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

CHARITY H FABER

Claimant

and

MANPOWER INC OF D M

Employer

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HEARING NUMBER: 16B-UI-12648

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

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

DECISION

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, Charity H. Faber, worked for Manpower, Inc. of Des Moines beginning February 23, 2015. (4:39-4:53) Her last assignment was at Vermeer Corp. as a full-time talent acquisition. (5:08-5:32) On September 23, 2015, Vermeer notified the Claimant that her assignment was going to end on October 9, 2015. (8:15-8:30) Ms. Faber told the Manpower onsite manager, Jerry, that she would need to set up an appointment for an additional assignment as soon as the Vermeer assignment ended. (8:35-8:45) The onsite manager contacted the Claimant on September 29, 2015 to inform her that she had set up a meeting with Felicia Van Vark at Manpower in Pella for the same day her assignment ended. (9:00-9:21)

On October 9, 2015 at approximately 3:45 p.m., the Claimant went to the Manpower office and spoke with Felicia to discuss her interests and immediate employment. The Employer told her about a job at the Des Moines Manpower office, which the Claimant wanted to think about because it required a commute and was considerably less pay. (9:44-9:55) Ms. Faber expressed a preference for employment in Pella because it was just 15 minutes away. (10:00-10:05) She did not hear back from Manpower even though she tried to contact them twice (November 2nd and 20th) to let them know she was still looking for work. She got no response. (10:08-10:57)

The Employer has a policy that required employees to contact the Employer within three days after an assignment's end. (7:23-7:39)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) 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.

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.

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 attribute more weight to the Claimant's version of events. We agree that the Claimant contacted the Employer well before her assignment's end to establish her desire to continue on to another assignment. Both parties agree that she participated in a meeting on October 9th, which was after work, and the very day her assignment ended. Thus, we can reasonably assume the Employer was well aware that her assignment had ended, and the reason for their meeting was for the purpose of obtaining an additional assignment. The fact that Ms. Faber did not readily accept the Des Moines assignment possibility was not intended to be a quit. Rather, her expression that she preferred to maintain employment in the Pella area was acknowledgement that she wanted to work and wanted Manpower to continue looking and notifying her of Pella prospects.

Although the Employer argues that she was merely discussing her interests, we find it difficult to believe in light of the Claimant's assertive behavior to set up a meeting nearly two weeks prior to her assignment's end. Perhaps, there was a misunderstanding in communication. However, we find that Ms. Faber's behavior was indicative of a person seeking to ensure continued employment well before her last day at Vermeer; and that she was attempting to minimize any potential gap between that end and the next assignment. Based on this record, we conclude that the Claimant satisfied the notification requirements set forth by the Employer when she met on October 9th, even though that meeting did not yield an immediate reassignment. The Claimant was available for continued work, but work was not assigned to her.

DECISION:

The administrative law judge's decision dated December 4, 2015 is **REVERSED**. The Claimant's separation was not voluntary quit, as she fulfilled the 3-day notification requirement to contact the Employer and requested another assignment for which there was no suitable work available at that time. Accordingly, the Claimant is allowed benefits provided she is otherwise eligible.

Ashley R. Koopmans

James M. Strohman

DISSENTING OPINION OF KIM D. SCHMETT:

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

Kim D. Schmett

A portion of the Claimant's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv