

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

WILLIAM G GAUL

Claimant

and

ADVANCE SERVICES INC

Employer

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HEARING NUMBER: 17BUI-03487

**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: 96.5-1J, 96.3-7

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. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Claimant was employed full-time as a temporary employee assigned at Monsanto on May 16, 2016. The end of this assignment was originally set for February 23, 2017. Around February 14 the Claimant was notified that the assignment would end on March 3, 2017. He was told not to report to work during the week prior to March 3 unless he was specifically called in. This was because Monsanto has a lab tour for the new buyers that week and didn't want employees there during the tour. On March 3 the assignment ended and the Claimant called in to the Employer and requested more work on March 6.

REASONING AND CONCLUSIONS OF LAW:

Legal Standards: Iowa Code section 96.5-1 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.

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.

In general, in cases where the law does not “deem” a quit, then “quitting requires an intention to terminate employment accompanied by an overt act carrying out the intent.” *FDL Foods, Inc. v. Employment Appeal Board*, 460 N.W.2d 885, 887 (Iowa App. 1990), accord *Peck v. Employment Appeal Board*, 492 N.W.2d 438 (Iowa App. 1992).

Application of Standards: It is the duty of the Board as the ultimate trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The Board, as the finder of fact, may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, as well as the weight to give other evidence, a Board member should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what evidence to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence the Board believes; whether a witness has made inconsistent statements; the witness’s conduct, age, intelligence, memory and knowledge of the facts; and the witness’s interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). The Board also gives weight to the opinion of the Administrative Law Judge concerning credibility and weight of evidence, particularly where the hearing is in-person, although the Board is not bound by that opinion. Iowa Code §17A.10(3); *Iowa State Fairgrounds Security v. Iowa Civil Rights Commission*, 322 N.W.2d 293, 294 (Iowa 1982). 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 considering the applicable factors listed above, and the Board’s collective common sense and experience. We have found credible the Claimant’s testimony about when his assignment ended, when it had been extended to, and the circumstances of why he was not actually working the week before March 3.

Since the Claimant was not discharged, and the assignment simply ended, there is no question of disqualification for misconduct. The issue is whether the Claimant can be “deemed” a quit under Iowa Code §95.5(1)(j). We conclude he cannot.

Under the applicable law the Claimant is deemed a voluntary quit only if he failed “to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment.” Iowa Code §96.6(2). This the Claimant did do. He was told that the assignment officially ended on March 3 and his contact to the Employer was within 3 days of that date. Moreover, even if the official ending date was different the Claimant had good cause for any delay because he reasonably relied on the ending date given to him. See 871 IAC 24.26(15)(b) (delay in reporting at end of assignment can be excused by good cause).

We conclude that the Claimant cannot be deemed to have quit for failing to request reassignment. This prevents the Claimant from being deemed to be a quit under Iowa Code §96.5(1)(j). Since the Claimant is not “deemed” to have quit he can be found to have quit only under the usual two-part test requiring an intent to quit and an overt act. Here we have

neither. We find, therefore, that the Claimant did not quit.

DECISION:

The administrative law judge's decision dated April 26, 2017 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. The overpayment entered against Claimant in the amount of \$2244.00 is vacated and set aside.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

RRA/fnv