

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

TANYA K PIERCE

Claimant

and

TEAM STAFFING SOLUTIONS INC

Employer

HEARING NUMBER: 17BUI-09340

**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-J

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

FINDINGS OF FACT:

Tanya Pierce (Claimant) worked for Team Staffing Solutions last assigned as a full-time assembler at Winegard from May 8, 2017 to August 21, 2017. The Claimant suffers from asthma and resigned her assignment because of health concerns associated with the Winegard building where she was assigned. After the Claimant ended the assignment, she remained an employee of Team Staffing Solutions. The Claimant was off work starting August 11 because she was not able to work, and she was hospitalized on August 15 and discharged late on August 17. She met with the Team Staffing representative on August 21 and told him that she could not work the assignment at that location unless she was allowed to take treatments, but she was denied this. At this meeting the Claimant made clear that she could work anywhere else. Her only express limitation was that she not be assigned to the same Winegard building that she had just been working in. She stated that she could go to any other job. The Claimant thus reported to Team Staffing for an assignment within three working days as required by written policy. The Claimant also spoke with Team Staffing sometime in late August after she had gotten more medical information from her pulmonary specialist.

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 addition the rules of Workforce also provide:

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: ...

....

24.26(15) Employee of temporary employment firm.

- a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.
- b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.
- c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.
- d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

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 description of her conversation with the Employer on August 21, and that the only express limitation on reassignment that was made was that she not be reassigned to the building where she had had her condition aggravated. We also find credible her testimony of additional contact with Team Staffing following her appointment with the pulmonary specialist.

Under the applicable law, the Claimant is deemed a voluntary quit only if she 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. She requested assignment on the 21st when she indicated her problems at the current assignment. We do not find that the condition of avoiding the location that aggravated her allergies was in effect a failure to request reassignment. Perhaps if Winegard were Team Staffing's only client we would so find, but the record does not support such a conclusion. Furthermore, in addition and independent of this conclusion, we find that the Claimant's contact with Team Staffing after she saw her pulmonary specialist was within a reasonable amount of time as allowed by rule 24.26(15)(c). This contact too complied with the three-day requirement.

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 she 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. The Claimant only intended to leave the assignment at that building not her employment with Team Staffing, and we find, therefore, that the Claimant did not quit her job with *Team Staffing*.

DECISION:

The administrative law judge's decision dated October 10, 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.

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 decision of the administrative law judge in its entirety.

Kim D. Schmett

RRA/fnv