

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

AMANDA J LAUBER

Claimant,

and

TEAM STAFFING SOLUTIONS INC

Employer.

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HEARING NUMBER: 10B-UI-01831

**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: 96.5-1J

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer 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:

Amanda Lauber (Claimant) began working through TSS (Employer), a temporary placement firm, on August 4, 2008. (Tran at p. 2-3; p. 5). She was assigned to work full time for All Steel and worked there until October 30, 2008. (Tran at p. 2). She was notified on October 31 that the assignment was over. (Tran at p. 2; p. 5).

The Claimant contacted TSS on November 3 and confirmed the end of her assignment with All Steel. (Tran at p. 2-3). At that time, she was offered another assignment with H J Heinz to start immediately. (Tran at p. 2-3; p. 4). She declined the assignment because she did not have transportation, and she only wanted jobs with insurance benefits. (Tran at p. 4; p. 6). She has not had contact the Employer since November 3, 2008 because she no longer wants to obtain work from the Employer. (Tran at p. 2-3; p. 5, ll. 1-3; p. 5, ll. 25-30 [no longer desired temporary employment]; p. 9, ll. 1-16 [did not want to go through Employer]). The Claimant is no longer employed by the Employer. (Tran at p. 2; p. 5; p. 10). The Claimant quit the Employer effective November 3, 2008. (Tran at p. 5; p. 9-10).

REASONING AND CONCLUSIONS OF LAW:

Background: 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.

Generally a quit is defined to be “a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.” 871 IAC 24.1(113)(b). Furthermore, Iowa Administrative Code 871—24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5.

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. On the issue of whether a quit is for good cause attributable to the employer the Claimant had the burden of proof by statute. Iowa Code §96.6(2). “[Q]uitting 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).

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. ...

Analysis: The statute requires that an employee of a temporary employment firm return and seek reassignment within three days if they want to collect benefits. Iowa Code §96.5(1)(j). There is no doubt that the Claimant did know she was to return, but she just didn't want to be reassigned. By statute this is a quit.

Even ignoring Iowa Code §96.5(1)(h) we would find a quit. The Claimant testified that she no longer wanted to do temporary work. She refused an assignment and never called again. This is not just a refusal of suitable work. A temporary employer is in the business of offering work. The first step in working for such an employer is accepting work. When an employee completely stops accepting work

assignments, they stop working for the temporary employer. Not *every* turn down of work by a temporary employee will necessarily be a quit. But when someone turns down such an offer citing lack of full-time benefits, *and then* fails to ever call back this is very good evidence of a quit. When this is coupled with the Claimant testimony that “I didn’t want to keep going through the temp agency” and that “I did not want to keep going through Team knowing that I could just work 90 days and be laid off again” a finding of a quit is virtually compelled.

Our conclusion that the Claimant quit is bolstered by the Claimant’s own appeal letter, although we would find a quit even without considering the appeal letter. In her appeal to the Administrative Law Judge the Claimant stated “I was not under the impression that I was technically still employed through Team Staffing. I also didn’t think that I had to go directly through team staffing.” When an allegation, which militates against the party making it, is made on pleadings or in a brief, and such allegation has not been withdrawn or superseded, it binds the party making it and must be taken as true by a court, administrative agency, or other finder of fact. See *Grantham v. Potthoff-Rosene Company*, 257 Iowa 224, 230-31, 131 N.W.2d 256 (1965)(cited in *Wilson Trailer Co. v. Iowa Employment Security Comm'n*, 168 N.W.2d 771, 776 (Iowa 1969)). See also *Larson v. Employment Appeal Board*, 474 N.W.2d 570, 572 (Iowa 1991). The Claimant had made clear that she quit the Employer for the simple reason that she wanted to look for work on her own. The Claimant quit, and she did not quit for good cause attributable to the Employer. She is therefore disqualified for benefits.

DECISION:

The administrative law judge’s decision dated March 31, 2010 is **REVERSED**. The Employment Appeal Board concludes that the claimant quit but not for good cause attributable to the employer. Accordingly, she is denied benefits until such time the Claimant has worked in and was paid wages for insured work equal to ten times the Claimant’s weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(1)“g”.

The Board remands this matter to the Iowa Workforce Development Center, Claims Section, for a calculation of the overpayment amount based on this decision.

John A. Peno

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