

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

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**THOMAS P UNSEN**

Claimant,

and

**L A LEASING**

Employer.

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**HEARING NUMBER: 11B-UI-15721**

**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 Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The claimant, Thomas P. Unsen, was initially employed by LA Leasing/Sedona Staffing beginning on September 16, 2008. (Tr. 3, 4, 6) On that same date, "...he signed an availability statement that states that he is to check in within three working days after the completion of an assignment or [the employer] would consider him to have quit..." (Tr. 3)

The claimant did not work for the employer until May 11, 2009 at which time he was required to complete a new application (Tr. 4) for which he was rehired that same day. (Tr. 2) The claimant did not sign a new availability statement, nor was he issued a copy. (Tr. 4) Mr. Unsen was assigned to work at Nordstrom.

On September 13, 2010, the on-site coordinator at Nordstrom ended the assignment due to lack of work. (Tr. 3) The employer contacted the claimant to inform him that he needn't report to work at Nordstrom as the work was completed. (Tr. 5) The employer did not reassign Ms. Unsen for other work. The claimant did not check in with the employer for additional assignments until September 23, 2010. The claimant is still employed with Sedona Staffing. (Tr. 6-7)

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1)"j" 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. (Emphasis added.)

There is no dispute that the claimant worked for this employer during two different time frames (September 16, 2008 & May 11, 2009). (Tr. 2, 4) Although the claimant signed an availability form ("j" notification statement within the meaning of the above-referenced statute) at the start of his first hiring, there is no evidence that this form was ever given to him back in September of 2008. The claimant had no recollection of ever receiving a copy and denied ever signing such a form the second time around. The employer has a statutory obligation to provide the claimant with this document in order for the claimant to be considered a quit without good cause in the event he fails to comply with the same.

In the instant case, it is clear that Mr. Unsen left his employment and then returned under a new contract based on his having to complete a new application and employment forms on May 11, 2009. (Tr. 4) Yet, the employer did not have the claimant re-sign a "j" form, much less provide him with a copy the second time around. The employer failed to comply with the notice requirements set forth in the statute. As such, how can the employer expect Mr. Unsen to comply with the details of that notification if he

doesn't have a copy? It was not wholly unreasonable for the claimant not to expect he had to re-contact the employer

about his assignment's end since it was the employer who contacted him. The employer had notice that the claimant was available for reassignment, yet offered no assignments at the time. Based on this record, we conclude that the employer failed to satisfy the "j" notification requirement set forth in the statute, and the claimant cannot be considered a voluntary quit. Mr. Unsen provided unrefuted testimony that he continues to be employed with Sedona Staffing. (Tr. 6-7)

**DECISION:**

The administrative law judge's decision dated December 30, 2010 is **REVERSED**. The claimant did not voluntarily quit his employment. Rather he completed his Nordstrom assignment, but was not yet reassigned to other work. Accordingly, he is allowed benefits provided he is otherwise eligible.

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John A. Peno

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Elizabeth L. Seiser

AMG/fnv

**DISSENTING OPINION OF MONIQUE F. 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.

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Monique F. Kuester

AMG/fnv