

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

CHAD L HOFFMEYER

Claimant,

and

AVENTURE STAFFING &
PROFESSIONAL

Employer.

HEARING NUMBER: 09B-UI-01116

EMPLOYMENT APPEAL BOARD
DECISION

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

FINDINGS OF FACT:

The notice of hearing in this matter was mailed January 27, 2009. The notice set a hearing for February 11, 2009 in which the issue of whether the claimant was separated from the temporary employer. The administrative law judge's decision was issued February 11, 2009; however, whether the employer had a stand-alone notification policy was not addressed at the hearing. The administrative law judge's decision has been appealed to the Employment Appeal Board.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2005) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

The Employment Appeal Board concludes that the record as it stands is insufficient for the Board to issue a decision on the merits of the case. The administrative law judge failed to establish whether the employer's reporting policy was a stand-alone notification, as required the Iowa Code section 96.5(1)"j."

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.

While the employer acknowledged having "some sort of document" that the claimant signed regarding his seeking a reassignment, very little evidence was provided as to the details of this document. (Tr. 3) According to the precepts of Baker v. Employment Appeal Board, 551 N.W. 2d 646 (Iowa App. 1996), the administrative law judge has a heightened duty to develop the record from available evidence and testimony given the administrative law judge's presumed expertise. Because there is little evidence in the record about this notification document and whether it satisfies the aforementioned statutory requirements, we must remand this matter for further consideration.

DECISION:

The decision of the administrative law judge dated February 11, 2009, is not vacated at this time. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, to reopen the record for the limited purpose of accepting this document into evidence, eliciting testimony from both parties, and making a determination as to whether this document satisfied the requirements of the statutory authority cited [Iowa Code section 96.5(1)"j" (2005)]. The administrative law judge shall conduct this limited hearing following due notice. After the hearing, the administrative law judge shall issue a new decision, which provides the parties appeal rights.

John A. Peno

Elizabeth L. Seiser

AMG/ss

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.

Monique F. Kuester

AMG/ss