

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

CRAIG A THODEN

Claimant,

and

ADVANCE SERVICES INC

Employer.

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HEARING NUMBER: 12B-UI-10023

**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 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:

The Employment Appeal Board would adopt, and incorporate as its own, the administrative law judge's Findings of Fact.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) (2011) 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.

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- 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 consequence 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.

We disagree with the administrative law judge's conclusion that the Employer's notification policy failed to comply with Iowa law. The Employer submitted documentation (Exhibit 2), which specifically notifies the Claimant of his responsibility to contact the Employer within three days after the termination of his assignment, and is separate and apart from the other policies (Exhibit 1). The Employer's notification policy nearly mirrors Iowa Code section 96.5(1)"j."

In addition, we note that the Claimant signed in acknowledgement of receipt of this policy on November 1, 2011. Thus, the Claimant knew that once his assignment ended on July 20th, 2012, he had until July 23rd, 2012 to contact the Employer for reassignment. His failure to do so renders his behavior to be a voluntary quit without good cause attributable to the Employer as a matter of law.

DECISION:

The administrative law judge's decision dated September 19, 2012 is **REVERSED**. The Employment Appeal Board concludes that the Claimant voluntarily quit without good cause attributable to the Employer. Accordingly, until such time he has worked in and was paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible. See, Iowa Code section 96.5(1)"g".

Lastly, because the Claimant has received two consecutive agency decisions that allowed benefits, the Claimant is now subject to the double affirmance rule.

Iowa Code section 96.6(2) (2007) provides, in pertinent part:

...If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no Employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable Employers, notwithstanding section 96.8, subsection 5...

The rule itself specifies:

Rule of two affirmances.

a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.

b. However, if the decision is subsequently reversed by higher authority:

(1) The protesting Employer involved shall have all charges removed for all payments made on such claim.

(2) All payments to the Claimant will cease as of the date of the reversed decision unless the Claimant is otherwise eligible.

(3) No overpayment shall accrue to the Claimant because of payment made prior to the reversal of the decision.

In other words, as to the Claimant, even though this decision disqualifies the Claimant for receiving benefits, those benefits already received shall **not** result in an overpayment.

John A. Peno

Monique F. Kuester

AMG/fnv

Cloyd (Robby) Robinson