

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

TRENTON E LILES

Claimant,

and

TEAM STAFFING SOLUTIONS INC

Employer.

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HEARING NUMBER: 14B-UI-03558

**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, 96.4-3

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. 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, Trenton E. Liles, worked for Team Staffing Solutions, Inc. and was on a full-time assignment as a pre-sort at CDS Global beginning November 13, 2013 through November 18, 2013. (7:40-7:18) On November 19th, the Claimant went into the Team Staffing office to inform the Employer that his right hand was swollen because of his last day's work. (9:15-8:52; 6:55-6:41; 5:55-5:38) The Claimant had a pre-existing hand injury for which he had surgery the previous July. (5:31-5:04) The Employer informed him that the company doctor was out of the office, but he could be sent to a physician's assistant. (11:14-10:46; 8:52; 6:29-6:22; 5:55-4:45) Mr. Liles declined and instead agreed to wait when the Employer asked him if he wanted to wait and give the Employer a call the following day so they could see how he was doing. (6:22-6:10) When the Employer inquired if he intended to return to CDS, Mr. Liles indicated he did not "...because it was too much wear and tear on his body..." (5:30-5:23; 5:16; 4:36; 4:00-3:49) No physician advised him to discontinue his employment. (9:50-9:46)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) (2013) 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.

871 IAC 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...

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code §96.6(2) (amended 1998).

871 IAC 24.26(6)"a" provides:

Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The record establishes that the Claimant's pre-existing injury was *not* work-related. The law provides that a Claimant may quit his employment because of a nonwork-related injury *if* advised by a 'licensed and practicing physician...' Here, the Employer offered Mr. Liles medical attention, which he declined. He preferred to wait and ultimately decided to sever his employment relationship, as the work was 'too much wear and tear on his body'. Mr. Liles never received advice from a doctor to quit his employment within the meaning of the rule. For this reason, we conclude that the Claimant failed to satisfy his burden of proof.

DECISION:

The administrative law judge's decision dated April 25, 2014 is **REVERSED**. The Claimant voluntarily quit his employment without good cause attributable to the Employer. Accordingly, the Claimant is denied 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".

Kim D. Schmett

Ashley R. Koopmans

DISSENTING OPINION OF CLOYD (ROBBY) ROBINSON:

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.

AMG/fnv

Cloyd (Robby) Robinson