

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

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**AJIT V JANI**

Claimant,

and

**WORKSOURCE INC**

Employer.

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**HEARING NUMBER: 11B-UI-07095**

**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: 96.5-1J**

**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 majority of the Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

Ajit Jani (Claimant) was employed by Worksource (Employer) from September 20, 2010, until December 22, 2010. (Rec. at 7:02; 19:20-25). During that time, he had one assignment at Rowe Electronics. (Rec. at 7:10-20; 19:50-57). The assignment ended by a layoff on December 17, 2010. (Rec. at 7:36; 10:40-42; 19:40; 20:12; 20:15-42; 22:54-23:08). On that same day, he called the receptionist to say he'd been laid off for lack of work. (Rec. at 20:15-42). He waited to hear from the Employer about other assignments, but was not called. (Rec. at 17:57-18:05; 25:22-25:40). The Employer considered the Claimant a voluntary quit. (Rec. at 8:40-42; 15:09-12).

## REASONING AND CONCLUSIONS OF LAW:

Legal Standards: Iowa Code section 96.5-1 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.

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. 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.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

In general, in cases where the law does not “deem” a quit, then “quitting 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).

Application of Standards: We have agreed with the Administrative Law Judge in finding that the Claimant was laid off and that he did not actually quit. The issue thus is whether he can be “deemed” a quit under Iowa Code §95.5(1)(j). For two reasons we conclude he cannot.

First, the Employer has not proven compliance with Iowa Code §96.5(1)(j). That paragraph requires proof that “the temporary employee, at the time of employment with the temporary employment firm” was required “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.” We have no evidence that the Claimant was required to read and sign the notification requirement. It was in a handbook, and he apparently received a copy of the handbook at time of hire. But we do not know if he was required to read it, and we have no evidence that he was required to sign the handbook, much less page 3 which sets out the provision in question. This alone prevents the Claimant from being deemed to be a quit under Iowa Code §96.5(1)(j).

Second, under the applicable law the Claimant is deemed a voluntary quit only if he failed “to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment.” Iowa Code §96.6(2). This the Claimant did do. Now if the Claimant had expressly stated at that time that he did not request reassignment, then he would have failed to “seek reassignment” and thus would be a quit. But the Claimant here, who is obviously not a native English speaker, was merely silent on the issue. Yet why would he call to say he was laid off if he wasn’t interested in reassignment? Baring something extraordinary the act of calling in to notify of a layoff from the assignment would be for the implied purpose of requesting reassignment. Given this we conclude that the Claimant cannot be deemed to have quit for failing to request reassignment. This alone prevents the Claimant from being deemed to be a quit under Iowa Code §96.5(1)(j).

Since the Claimant is not “deemed” to have quit he can be found to have quit only under the usual two-part test requiring an intent to quit and an overt act. Here we have neither. We find, therefore, that the Claimant did not quit.

## **DECISION:**

The administrative law judge’s decision dated June 23, 2011 is **REVERSED**. The Employment Appeal Board concludes that the claimant was not separated from employment in a manner that would disqualify the Claimant from benefits. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

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John A. Peno

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**DISSENTING OPINION OF MONIQUE 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

RRA/fnv