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

MICHAEL A COLUMBUS	:	
	:	**HEARING NUMBER:** 14B-UI-09179
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
TEAM STAFFING SOLUTIONS INC	:	
Employer.		

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

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. 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:

Michael Columbus (Claimant) worked for Team Staffing Solutions (Employer) on assignment as a full-time assembler at Winegard from April 2013 until August 18, 2014. The Employer is a temporary staffing firm. The Employer notified the Claimant in writing that its employees must contact the Employer within 3 working days of the end of assignment and request a new assignment or else be considered to have quit. (Ex. 1). The document is separate from other written policies, and the employee is given a copy. On August 15, 2014 the Claimant was removed from his assignment at the client's request that he be removed and not assigned there again. The Claimant did not request reassignment for any place other than with Winegard.

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.
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> 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.

The Employer has the burden of proving disqualification under paragraph 96.5(1)(j) except that the compliance with the good cause exception is on the claimant.

Application of Standards: It is clear the Claimant did not quit his *assignment*. Still, the first question here is whether the Claimant is to deemed a quit the *temporary employer* under Iowa Code §95.5(1)(j). We conclude that he did. Although the Administrative Law Judge focused on the hearsay issue we find this largely irrelevant. That is because the Claimant's evidence is not really in conflict with the Employer's notation. The Claimant testified he only sought to be "reassigned" at Winegard. In reality this is not a reassignment request but a request to reverse the decision to end the assignment. The plain fact is the Claimant sought to return to a place that had made the decision not to employ him any longer, and then made no attempt to seek assignment anywhere else. This being the case, we conclude that the Claimant did not request reassignment since asking to be assigned to a client at which you have just been told you cannot work is not requesting reassignment within the meaning of Iowa Code §95.5(1)(j). The Employer has thus proven the Claimant is not eligible by operation of that Code paragraph.

Not only is the Claimant's inaction deemed a quit under that provision but we think it also satisfies the definition of quit in the ordinary sense of the word. *FDL Foods, Inc. v. Employment Appeal Board*, 460 N.W.2d 885, 887 (Iowa App. 1990), *Peck v. Employment Appeal Board*, 492 N.W.2d 438 (Iowa App. 1992); 871 IAC 24.1(113)(b). The Claimant knew he wasn't getting assigned to that client, and yet that was all he asked for. The requirements of §95.5(1)(j) aside, we find this action by the Claimant evidences his intent to quit, and was an overt act of quitting. Thus under this independent alternate theory the Employer has proven that the Claimant is disqualified for quitting.

No Repayment Required: Finally, since the Administrative Law Judge allowed benefits and in so doing affirmed a decision of the claims representative the Claimant falls under the double affirmance rule:

> 871 IAC 23.43(3) 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.

Thus the Employer's account may not be charged for any benefits paid so far to the Claimant for the weeks in question, but the Claimant will not be required to repay benefits already received.

DECISION:

The administrative law judge's decision dated October 3, 2014 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was separated from employment in a manner that disqualifies the Claimant from benefits. Accordingly, he is denied benefits until such time the Claimant has worked in and was paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(1)"g".

No remand for determination of overpayment need be made under the double affirmance rule, 871 IAC 23.43(3), but still the Employer's account may not be charged.

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Kim D. Schmett

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Samuel P. Langholz

DISSENTING OPINION OF ASHLEY KOOPMANS:

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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Ashley R. Koopmans

RRA/fnv