

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

KORYN E STINTON

Claimant,

and

ADECCO USA INC

Employer.

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HEARING NUMBER: 08B-UI-02429

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)j

DECISION

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:

Koryn Stinton (Claimant) was a temporary employee of Adecco USA (Employer). (Tran at p. 2). The Claimant was employed in a temporary assignment until January 24, 2008 when the assignment ended. (Tran at p. 2). Adecco's customer American Identity notified her of the end of the assignment. (Tran at p. 2). Claimant did not contact employer for work within three days after the end of the assignment. (Tran at p. 3). The "Mandatory Contact Notice" supplied to the Claimant by the Employer states in paragraph b that employees must contact the Employer with two days after the end of an assignment. (Employer's Exhibit 1). Paragraph c states that failure to contact the Employer within two days of the end of an assignment may be deemed a quit or a termination. (Employer's Exhibit 1). An asterisk is attached to paragraph b but not paragraph c. (Employer's Exhibit 1). This asterisk refers to a footnote

that states that associates in Iowa must contact the Employer within three days after the completion of the assignment. (Employer's Exhibit 1).

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(1) states:

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.

The law requires that the employee must be informed “in writing of the notification requirement” and that the document must provide a “clear and concise explanation of the notification requirement and the consequences of a failure to notify.” Iowa Code §95.5(1)(j). Although this requirement is specific it is not particularly burdensome. Thus we have seen many Iowa temporary employment firms who have successfully drafted j-complaint forms. The form in this case falls short of this because it is not a “clear and concise explanation.”

First, we are troubled by the use of an asterisk on such an important notification. Much clearer would be a form for Iowa associates. It is always tricky working with exceptions and even more so when the exception is in a footnote. Second, the Employer failed to put an asterisk on the second two-day reference. The Code requires a “clear and concise explanation” of both the notification requirement and “the consequences of a failure to notify.” Even ignoring the confusing nature of an exception in a footnote, the paragraph setting out the consequences of failure to notify has no footnote. And that paragraph states only that failure to call in for two days “may” be considered a quit or termination. Since the form gives lowans three days this suggests that for lowans failure to call after two days would not be considered a quit or termination. What, then, about a failure to call in after three days for lowans? The form’s literal terms do not address this. It is possible after interpretive effort to conclude that the Employer is trying to say that lowans must call in within three days on pain of being separated by a quit or termination. But the fact that one must work this hard to even see the footnote and then to interpret what it must mean just points up that the form is not on its face “a clear and concise explanation.”

Finally, we have not considered the fact that the Employer may have given the Claimant verbal instructions on the three-day requirement. The Code requires the written document to be clear and concise. Whether the document is clear on its face is determined by the face of the document and nothing else. The obscurity of the actual form is not altered by the fact that it can be explained verbally. Indeed, if the document were clear on its face there would be no need to verbally clarify it. Since the face of the form was not “clear and concise” as required by law the Employer is unable to rely on “j” to deem the Claimant a voluntary quit. We find that the Employer has failed to prove a disqualifying separation and therefore allow benefits if the Claimant is otherwise eligible.

DECISION:

The administrative law judge’s decision dated March 31, 2008 is **REVERSED**. The Employment Appeal Board concludes that the employer has failed to prove that the Claimant was 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. The overpayment entered against claimant in the amount of \$616.00 is vacated and set aside.

Elizabeth L. Seiser

RRA/fnv

John A. Peno

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. The Employer's notice is not as clear as it could be, but it is sufficiently clear to put the Claimant on notice of the need to call in within three days. Any lack of clarity means only that the Claimant would think she had *less* time to call in. All this means is that a misled claimant would be *more* prompt in calling. Since the only possible effect of any lack of clarity would be to assure that the employee would meet the three-day Iowa deadline, I cannot find that the form is unclear in any material way. In addition, the asterisk on the first occurrence of the two-day requirement is sufficient clarification for the entire document. The footnote referenced by the asterisk states "[e]xceptions to the two business day notification period are listed below." The exception for Iowa, then, is to the "two business day notification period" wherever it appears. Granted, the Employer may do well to revise its form at least to have an asterisk on each occurrence of the two-day requirement in the text. While advisable, such a revision is not necessary in my opinion, and the form is minimally clear enough as it is. I would thus affirm the Administrative Law Judge.

Monique Kuester

RRA/fnv