

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov**

MARK D EASTON	:	
	:	HEARING NUMBER: 22B-UI-22334
Claimant	:	
	:	
and	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
QPS EMPLOYMENT GROUP INC	:	
	:	
Employer	:	

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: 96.5-1J

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. The Appeal Board 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:

Mark Easton (Claimant) was employed by QPS Employment Group, a temporary employment firm, and was assigned to work as a full-time Machine Operator at Traffix Devices from May 10, 2021 through August 23, 2021. On August 23, 2021, QPS informed Claimant that his assignment was terminated by Traffix Devices due to performance and safety concerns. Claimant questioned QPS for details about the reason Traffix Devices ended the assignment, and after this the Claimant asked "Where do we go from here? Do you have more work for me?" He was told that they probably do and that he should contact the Fairfield office.

Claimant called QPS's Fairfield office on August 24, 2021 and was told he was no longer eligible for employment through QPS. He persevered and his call went through. At the end of this conversation the Claimant asked for more work.

During these calls the Claimant did ask what else QPS had for him, and he was told there was nothing at that time.

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: It is the duty of the Board as the ultimate trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The Board, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, as well as the weight to give other evidence, a Board member should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what evidence to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence the Board believes; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). The Board also gives weight to the opinion of the Administrative Law Judge concerning credibility and weight of evidence, particularly where the hearing is in-person, although the Board is not bound by that opinion. Iowa Code §17A.10(3); *Iowa State Fairgrounds Security v. Iowa Civil Rights Commission*, 322 N.W.2d 293, 294 (Iowa 1982). The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence considering the applicable factors listed above, and the Board's collective common sense and experience. We have found credible the Claimant's description of his conversations with QPS on August 23, 24 and 25. In particular, we find credible that the Claimant did ask about other assignments and was told there were none. It is possible these calls took place on the 24th and 25th rather than the 23rd and 24th, but this makes no difference in our analysis, nor does any possible minor date confusion affect our credibility assessment.

The assignment ended when the client employer was dissatisfied with the Claimant and asked that he not be assigned to them. The reasons given were stated in general terms, and by themselves were little more than allegations insufficient to prove misconduct. *See* 871 IAC 24.32(4). If we were to apply a discharge analysis we would find that QPS did not prove misconduct under the standards of 871 IAC 24.32(1)(a). The issue thus is whether the Claimant can be "deemed" a quit under Iowa Code §95.5(1)(j). We conclude he cannot.

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 §96.5(1)(j)(1). This the Claimant did do.

We conclude that the Claimant cannot be deemed to have quit for failing to request reassignment. This 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 December 14, 2016 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.

James M. Strohman

Ashley R. Koopmans

Myron R. Linn

RRA/fnv