

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

---

**CAROLYN B TELLERY**

Claimant,

and

**LA LEASING INC**

Employer.

:  
:  
:  
:  
:  
:  
:  
:

**HEARING NUMBER: 10B-UI-07215**

**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: 96.5-1-J**

**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:**

LA Leasing/Sedona Staffing (Employer) is a temporary employment service. (Tran at p. 2). Carolyn Tellery was hired by the Employer on January 13, 2003. (Tran at p. 7). The Claimant's most recent assignment was at Purina. (Tran at p. 3). On March 22, 2010 the Claimant requested March 24, and 25<sup>th</sup> off. (Tran at p. 3; p. 7 [last day on job site]; p. 11). She made the request of her on-site supervisor at Purina, Alisha, who also worked for this Employer. (Tran at p. 3). The Claimant was approved by Alisha. (Tran at p. 3). The Claimant further informed Alisha's supervisor, Kim, who was an account associate for this Employer. (Tran at p. 3). Kim also approved the requested time off. (Tran at p. 3).

The Claimant worked the full day on the 22<sup>nd</sup>. (Tran at p. 3). When she arrived home she was told by one of the Employer's account associates that she was not needed at Purina on the 23<sup>rd</sup>. (Tran at p. 3-4). She was told not to come to work on the 23<sup>rd</sup>. (Tran at p. 4). On Friday, March 26 the Claimant called the Employer as usual and was told there was no work for her. (Tran at p. 4). She called on the 29<sup>th</sup> and was told no work was available. (Tran at p. 9-10). She continued to call in every day until sometime in June, 2010. (Tran at p. 4-5). The Claimant did not quit. (Tran at p. 6).

## 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.

On the issue of whether the Claimant has reported pursuant to paragraph "j," the Claimant had the burden of proof by statute. Iowa Code §96.6(2).

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: The disqualification decision has two problems with it. First, it seems to require the Claimant to call on days in which she was not to be working, and everyone knew it. Second, it seems to require a Claimant to tell the Employer about the end of the assignment when it was the Employer who told the Claimant in the first place.

As to the counting, the Claimant spoke to the Employer on March 22 and was told there was no work for her on the 23<sup>rd</sup>, and that she was not to come in. March 23<sup>rd</sup> does not appear to us to be a "working day" as set out in the Code. Next on the 24<sup>th</sup> and 25<sup>th</sup> the Claimant had asked for the Employer to approve time off. The Employer approved the time and was absolutely aware the Claimant would not be working those days. These days sure don't look like "working days." So the Claimant called on her next "working day," March 26 and was told there was no work. She then called on the 29<sup>th</sup> - within 3 *calendar* days (one working day if we exclude weekends) - and was told there was no work. She then called everyday after that. We just cannot find any period of time where the Claimant exceeded 3 working days without informing the Employer of the end of the assignment and requesting reassignment.

We do recognize that the agency regulations tie "working days" to the normal business days of the temporary employment firm. 871 IAC 24.26(15)(d). But we think this means that the phrase "working days" means *at most* only days the temporary employer is open. Regardless, the rules do describe that good cause for not notifying the Employer "is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer." 871 IAC 24.26(15)(c). Here the Claimant was told not to come to work, and was *approved for leave* (for court dates, and doctor's appointments). The Claimant had "other substantial reasons" for not calling in, even if we did count scheduled days off as working days. This alone establishes that the Claimant complied with the "j" requirement.

In addition, we have in the past ruled that the Code does not require calling in and requesting reassignment when it is the temporary employer who notifies the Claimant of the end of the assignment and the lack of work. Under the applicable law the Claimant is deemed a voluntary quit only if she 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). It was the Employer who told the Claimant there would be no work on the 23<sup>rd</sup>. A requirement of a second notice to an employer who already has actual notice of the end of the assignment would be a pointless exercise and we therefore do not read the law as requiring this. Requiring someone to call in on a day they had been told not to come in, and then requiring them to call on two days the Employer had approved as days off would be absurd. (Which no doubt is why the Code references “working days”). The Employer well knew that the Claimant was not working on the 23<sup>rd</sup>, and it knew why. The Employer had the necessary notice and the Claimant is therefore not deemed to have quit pursuant to Iowa Code section 96.5(1)“j”.

Since the Claimant is not “deemed” to have quit she 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. The Petitioner intended only to have some time off, and this was granted. She then called back repeatedly and was told there was no work for her. She testified emphatically that she did not intend to quit. (Tran at p. 6). The Claimant’s actions show that she was not quitting, and her testimony about her intent is credible. We find, therefore, that the Claimant did not quit.

#### **DECISION:**

The administrative law judge’s decision dated June 17, 2010 is **REVERSED**. The Employment Appeal Board concludes that the claimant 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.

---

John A. Peno

---

Elizabeth L. Seiser

**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. It is clear that the claimant failed to request reassignment within the allotted days. I am obliged to rely on the sworn testimony of the employer that their notification adheres to the code. (TR: P.8 ln. 26 and P. 9 ln. 16).

As a point of additional clarification any temporary staffing agency must provide a stand-alone form separate from the contract of hire that clearly outlines the provisions of the code section: In this case the employer witness appeared to be confused by semantics. Whether it is a “contract” or “policies and procedures” there must be a stand-alone document outlining the provisions of the following Iowa Code Section;

Iowa Code section 96.5(1)“j” provides

j. The individual is a temporary employee of 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.

All temporary employers are required to show that their employees have been advised in writing of the notification requirement. In addition, all temporary employment firms under Iowa Code must at the time of employment provide a document for signature by the employee that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document must be separate from any contract of employment or *policy or procedures* of the employer and a copy of the signed document shall be provided to the temporary employee. (Emphasis added.)

Finally, it would be advantageous to the employer to review the code section and all related documentation to ensure that it meets the standard outlined in the code. It would also be beneficial to all involved parties if a copy of the stand-alone document was provided as evidence throughout the appeal process.

---

Monique F. Kuester