

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

LISA M BISBEE	:	
	:	
Claimant,	:	HEARING NUMBER: 09B-UI-10547
	:	
and	:	
	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
EXPRESS SERVICES 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: 96.5-1

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 Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Express Services Inc. is a temporary employer. (Tran at p. 1-2). Lisa Bisbee (Claimant) worked on assignment for the Employer at Airon Advanced Manufacturing. (Tran at p. 2). The Claimant's assignment at Airon ended on December 29, 2008 due to the client's dissatisfaction. (Tran at p. 1-2). The Claimant was laid off, and not told why. (Tran at p. 2). The Claimant had started working second shift for Airon, but at the end was working first shift. (Tran at p. 3). The Claimant notified the Employer of her availability on December 29. (Tran at p. 2). She told the Employer she would be available first or second shift. (Tran at p. 2, ll. 13-13; p. 2, ll. 19-20; p. 3, ll. 1-2).

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.

Generally a quit is defined to be “a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.” 871 IAC 24.1(113)(b). Furthermore, Iowa Administrative Code 871-24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5.

Since the Employer had the burden of proving disqualification the Employer had the burden of proving that a quit rather than a discharge has taken place. On the issue of whether a quit is for good cause attributable to the employer the Claimant had the burden of proof by statute. Iowa Code §96.6(2). “[Q]uitting 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).

This case need not detail us long. Both parties testified the assignment ended, and that this is why the Claimant stopped working. No one testified she quit to go to school. Further the evidence supports that at the time of the separation the Claimant had not restricted the shifts she would work. The Claimant testified she told the Employer she was available first and second shift. The Employer testified the Claimant told it she was available first and second shift. We conclude that the Claimant did not intend to quit and took no overt act of quitting. The Employer has not proven that the Claimant quit.

DECISION:

The administrative law judge's decision dated August 19, 2009 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.

John A. Peno

Elizabeth L. Seiser

Monique Kuester

RRA/ss