

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

TYRISHA L DAVIS

Claimant

and

**MIDWEST PROFESSIONAL STAFFING
LLC**

Employer

:
:
:
:
:
:
:
:
:

HEARING NUMBER: 17BUI-12528

**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. 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:

Tyrisha Davis (Claimant) was a temporary employee working for Midwest Professional Staffing LLC (Employer) most recently on an 18 month assignment to Equifax. A couple weeks before the scheduled end of the assignment, on October 26, 2016 Equifax decided that it did not want the Claimant to work there because of dissatisfaction with how she performed her job. The Claimant had not been warned over this dissatisfaction. After the end of the assignment at Equifax the Claimant remained employed with the temporary employer Midwest Professional. On October 26 Midwest Professional's representative spoke with the Claimant and told her that the assignment with Equifax had ended. During that conversation on October 26 the Claimant asked for more work but was told that there was none. She was not referred to another representative.

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 her conversation with Ms. Morrow, and also Claimant’s evidence that she was unaware that Ms. Morrow only handled the Equifax account.

The assignment ended when the client employer was dissatisfied with the Claimant and asked that she not be assigned to them. If we were to apply a discharge analysis, we would find that the Employer 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 she cannot.

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). This the Claimant did do. Since she was not aware that Ms. Morrow only handled Equifax and since after asking for another assignment she was not made aware of this, nor referred to another representative, her request for another assignment made to Ms. Morrow was sufficient to discharge her obligations under the Code.

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, 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. We find, therefore, that the Claimant did not quit.

DECISION:

The administrative law judge's decision dated December 16, 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.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

RRA/fnv