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

WINFRED T DAVIS	:	
	:	**HEARING NUMBER:** 11B-UI-02847
Claimant,	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
LABOR READY MIDWEST	:	
Employer.		

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, 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. Two 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:

The claimant, Winfred T. Davis, initially, signed up to accept temporary work assignments from Labor Ready Midwest on June 10, 2010. (Tr. 4, 11, 12, Employer's Exhibit 3) At Labor Ready, the claimant could call in at a certain time on a daily basis or come in to inquire if there was suitable work available. (Tr. 4) If he came in, he could put his name on the daily sign-up sheet, signifying he was available for work and looking for assignment. (Tr. 12) He did not always place his name on this sign-up sheet. (Tr. 11) If the claimant had a job assignment, he was issued a ticket or tickets depending on how many days he was assigned to a job. (Tr. 11-12) In these cases, he had no need to sign the sheet if the assignment went beyond one day and he had more than one ticket. (Tr. 11)

The claimant's last assignment occurred on October 29th, 2010 at the 53rd St. Cinema, which lasted for one day. (Tr. 5, 13) When the employer contacted him the following Monday to see if he wanted to return to that same location, he declined based on other obligations for that day. (Tr. 5) The employer contacted him for work on November 1st, 2010 at 10:00 a.m. for a 4-hour assignment (Tr. 6, 8), but Mr. Davis, who was receiving unemployment benefits, declined based on what he was told by Iowa Workforce that "… [he] didn't have to accept anything that was under $13/hour if it was suitable work." (Tr. 8) Since this assignment paid only $10/hour and involved just a few hours, he understood he wasn't obligated to accept it. (Tr. 6)

Labor Ready contacted Mr. Davis in December for a job in Fort Madison that involved a 4-hour commute to and from the worksite. Another employee failed to report and the employer needed a replacement. (Tr. 7, 8-9) The claimant declined this offer as well because he didn't feel it was worth it for "…$40 or $50 [a day]…on the road for like four hours…" (Tr. 8) He contacted Labor Ready that same evening to see if they found another replacement and told them to call him back if they couldn't. (Tr. 9) Labor Ready never called him for any further assignments. Between Mr. Davis' first assignment and this last assignment, he accepted approximately 15 spot jobs with Labor Ready. (Tr.10, Claimant's Exhibit A)

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.26(19) provides:

> The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. *An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment*. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment. (Emphasis added.)

It is clear from this record that Mr. Davis was hired as a spot labor employee within the meaning of the law, which is corroborated by Employer's Exhibit 3 that specifies, "…I am not employed until I actually begin working a job assignment and my employment with Labor Ready is terminated at the end of each day…" With spot labor, the employee is often hired for a specific task, rather than a specified time, and when the job is completed the employment is ended. The ending of the task means the ending of contract and, as with those hired for a specific period, the separation is the result of the operation of the contract and is not the result of a quit. Similarly spot labor may also be for a very limited specified term, for example, a single day or two, which was oftentimes the case with Mr. Davis. (Claimant's Exhibit A) See also, 871 IAC 24.26(22).

The employer's statement embodied in Exhibit 3 clearly manifests the employer's intention to sever its relationship with the claimant at the end of each assignment which was clearly for a specified task or a specific period of time, as opposed to retaining him for extended assignments as with a temporary employment agency. Mr. Davis did not quit his employment; rather, upon completion of each assignment which coincided with a particular ticket, he fulfilled that particular contract of hire and was ready to accept the next contract by signing up for an additional work. His refusal to accept that last assignment was based on its suitability, which he was free to do based on his contract with the employer. According to the aforementioned rule, such a refusal shall not be considered a voluntary quit; thus, Iowa Code section 96.5(1)"j" would not apply, as the employer knew at the onset of his assignment its duration and there would be no need for "j" compliance.

DECISION:

The administrative law judge's decision dated April 15, 2011 is **REVERSED**. The Employment Appeal Board concludes that the claimant did not voluntarily quit his employment; rather, he is a spot labor employee who has fulfilled his contract of hire. Accordingly, he is allowed benefits provided he is otherwise eligible.

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John A. Peno

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Elizabeth L. Seiser

AMG/fnv