

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

DAVID RUIZ GUZMAN

Claimant,

and

SUPREME STAFFING INC

Employer.

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HEARING NUMBER: 08B-UI-06846

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

FINDINGS OF FACT:

The notice of hearing in this matter was mailed August 1, 2008. The notice set a hearing for August 11, 2008. The administrative law judge's decision involving a separation from a temporary employer was issued August 12, 2008. The claimant started working for Supreme Staffing on September 14, 2007 until June 26, 2008 when he was discharged from his assignment with Miller. (Tr. 4-5, 6, 7, 12) At the start of his employment, the employer wanted him to sign off on the employer policies, which he did not understand because the document was in English. (Tr.19, 21) After he was terminated from the Miller assignment, the claimant returned to Supreme Staffing to obtain another assignment, but was told there was no work available. (Tr. 8, 9, 15) A week later, he retrieved his last paycheck and was told again, there was no work. (Tr. 7-8) The employer did not rehire the claimant. (Tr. 22) The claimant requested that the employer send him documentation of his separation, which the employer never complied with his request. (Tr. 19, 21)

The record contains no evidence of whether or not there existed a separate "j" statement, with regard to employees' notice requirements upon completion of assignments.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2005) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

The Employment Appeal Board concludes that the record as it stands is insufficient for the Board to issue a decision on the merits of the case. The administrative law judge failed to establish whether the employer's reporting policy was a stand-alone notification, as required the Iowa Code section 96.5(1)"j."

Iowa Code section 96.5(1)"j" provides:

An individual shall be disqualified for benefits: *Voluntary Quitting*. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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.

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.

Cite pertinent facts with reasoning...

According to the precepts of Baker v. Employment Appeal Board, 551 N.W. 2d 646 (Iowa App. 1996), the administrative law judge has a heightened duty to develop the record from available evidence and testimony given the administrative law judge's presumed expertise. Here, this document appears to have been overlooked. For this reason, we remand this matter for further consideration.

DECISION:

The decision of the administrative law judge dated August 12, 2008, is not vacated at this time. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, to reopen the record for the limited purpose of accepting this document into evidence, eliciting testimony from both parties, and making a determination as to whether this document satisfied the requirements of the statutory authority cited [Iowa Code section 96.5(1)"j" (2005)]. The administrative law judge shall conduct this limited hearing following due notice. After the hearing, the administrative law judge shall issue a new decision, which provides the parties appeal rights.

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

AMG/kjo