

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

LEEANDER COLLINS

Claimant,

and

EXPRESS SERVICES INC

Employer.

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HEARING NUMBER: 11B-UI-03654

**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, 96.3-7

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:

LeeAnder Collins (Claimant) worked for Express Services, Inc (Employer) most recently on assignment as a full time general laborer at R.R. Donnelly from July 5, 2010 through February 14, 2011. (Tran at p. 2; p. 5). The Employer is a temporary employment firm. On February 15, 2011 R.R. Donnelly asked the Employer to remove the Claimant from the assignment. (Tran at p. 2; p. 3).

On February 15, someone from the Employer contacted the Claimant on February 15 and told him that his assignment at R.R. Donnelly was ending for the stated reason of excessive absenteeism. (Tran at p. 2; p. 3). At that time the Claimant still was employed by the Employer and had not been separated. (Tran at p. 4). He was not discharged over the attendance issues. (Tran at p. 4). During the February 15 phone call the Claimant did ask for additional assignment but was not given any at that time. (Tran at p. 6). The Claimant also requested reassignment on Friday, February 18. (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 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. We have found credible that the Claimant did request reassign in the February 15 phone call. He did request reassignment with 3 days of the end of the assignment. Since it was the Employer who told the Claimant of the end of the assignment, 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 he 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.

Finally, the Claimant is not disqualified under a discharge theory. Generally, “[t]here must be a direct causal relation between the misconduct and the discharge... Simply put, we think an employer must establish that the employer discharged the claimant because of *a specific act or acts of misconduct*.” *West v. Employment Appeal Board*, 489 N.W.2d 731, 734 (Iowa 1992)(emphasis in original); *accord Larson v. Employment Appeal Bd.*, 474 N.W.2d 570, 572 (Iowa 1991) (record revealed claimant was fired for incompetence; claim that she was fired for deceit was supplied by agency post hoc); *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 669 (Iowa 2000)(incident occurring after decision to discharge is irrelevant). The burden on the Employer is to prove that the Claimant was “discharged for misconduct”. Iowa Code §96.5(2)(a). The Code does not state that the Claimant is disqualified if a termination would be justified by misconduct but only if the termination was “for” misconduct. The assignment here ended, but no discharge resulted. Since the discharge (if any) was not caused by absenteeism at the assignment, there can be no disqualifying discharge for misconduct even if we were to find the absenteeism to be misconduct.

DECISION:

The administrative law judge's decision dated May 4, 2011 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

RRA/fnv