

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

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MELVIN PEACOCK

Claimant,

and

SUPREME STAFFING INC

Employer.

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HEARING NUMBER: 08B-UI-02468

EMPLOYMENT APPEAL BOARD  
DECISION

The **SECTION:** 10A.601 Employment Appeal Board Review

**D E C I S I O N**

**FINDINGS OF FACT:**

A hearing in the above matter was held April 2, 2008 in which the claimant did *not* participate. The administrative law judge's decision was issued April 2, 2008. However, the issue of whether or not the employer satisfied the Iowa Code section 96.19(38) "j" requirement was not adequately addressed at the hearing. The administrative law judge's decision has been appealed to the Employment Appeal Board.

**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 notification policy was a clear and concise stand-alone document, as required by 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.

Here, the employer loosely testified that there were "... rules and guidelines that everybody signs they must contact [the employer] within three working days after completion of assignment..." (Tr. 3) 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. Without any corroborating evidence, i.e., more specific details of this documentation, claimant's testimony, etc., the Board is unable to render a decision. For this reason, we remand this matter for further consideration.

## DECISION:

The decision of the administrative law judge dated April 2, 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 obtaining additional evidence from both parties, and making a determination as to whether the notification 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.

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Elizabeth L. Seiser

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John A. Peno

**DISSENTING OPINION OF MONIQUE F. KUESTER:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would find that there is enough evidence in the record to render a decision on the merits of this case. Thus, I would not grant a remand of this matter.

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Monique F. Kuester

AMG/kjo