

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JIM W WORKMAN

Claimant

APPEAL NO. 07A-UI-09317-HT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

MANPOWER INTERNATIONAL INC

Employer

**OC: 04/08/07 R: 01
Claimant: Respondent (2)**

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Manpower, filed an appeal from a decision dated September 21, 2007, reference 06. The decision allowed benefits to the claimant, Jim Workman. After due notice was issued, a hearing was held by telephone conference call on October 23, 2007. The claimant participated on his own behalf. The employer participated by Staffing Specialist Todd Ashenfelter.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Jim Workman was employed by Manpower from September 20, 2006 until May 2, 2007. His last assignment began April 23, 2007, at NSK, working 7:00 a.m. to 3:00 p.m. This was a long term temp-to-hire position.

On May 1, 2007, the NSK supervisor told the claimant he was being moved to the 9:00 p.m. to 5:00 a.m. shift. The claimant could not work this shift due to lack of childcare and so he stopped reporting for work. At no time did he notify Manpower of the proposed change in his work hours and that he could not work that shift, or request another assignment. When he applied for work Mr. Workman said he could work day or evening hours, but not overnight.

Had the claimant notified Manpower, the employer would have attempted to find him another shift or another assignment, but he simply stopped coming to work and never told anyone he would not return or why.

Jim Workman has received unemployment benefits since filing an additional claim with an effective date of July 8, 2007. The record of Iowa Workforce Development indicates he has not earned at least ten times his weekly benefit amount subsequent to his separation from Manpower.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code

section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant stopped coming to work without notifying anyone at NSK or Manpower. While the client company did change his hours, he was still obligated to notify Manpower that the hours had been changed contrary to the agreement under which he accepted the assignment and request another assignment. Under the provisions of the above Code sections, this is a voluntary quit without good cause attributable to the employer for which the claimant is disqualified. In addition, three days of no-call/no-show to work is considered a disqualifying voluntary quit.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of September 21, 2007, reference 06, is reversed. Jim Workman is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$788.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css