

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

C MICHAEL PHARAOH CARLSON
1512 PARK #05
DES MOINES IA 50314

MANPOWER INC OF DM
517 – 5TH AVE
DES MOINES IA 50309

MANPOWER OF DES MOINES
C/O TALX UCM SERVICES
P O BOX 66864
ST LOUIS MO 63166-6864

AMENDED

Appeal Number: 05A-UI-07267-HT
OC: 05/22/05 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Quit
Section 96.(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Manpower, filed an appeal from a decision dated July 1, 2005, reference 02. The decision allowed benefits to the claimant, Michael Pharaoh-Carlson. After due notice was issued a hearing was held by telephone conference call on August 2, 2005. The claimant participated on his own behalf. The employer participated by On Site Supervisor Gini Wolf. Exhibits A and B were admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Michael Pharaoh-Carlson was employed by Manpower from March 8, 2004 until April 19, 2005. His last assignment began on December 6, 2004, at Principal. At the time of hire he received a signed a copy of the employer's policies which requires employees to call a staffing specialist within three working days of the end of an assignment to request another assignment, or it would be considered a voluntary quit.

During this last assignment the claimant missed 19 days of work and left early on 5 days. He was counseled by the employer and by the client on three occasions, and his poor attendance was discussed. He was advised to make a commitment to the assignment and improve his attendance or his job could be in jeopardy. The absences were due to personal or family illness.

On April 19, 2005, the claimant again called in absent, this time due to a "family medical emergency." His domestic partner had attempted suicide. The client notified On-Site Supervisor Gini Wolf it wanted Mr. Pharaoh-Carlson removed from the assignment and she notified him by phone. The next day the claimant and Ms. Wolf spoke again and she advised him to contact Manpower when he had his personal life "together" and would be able to commit to another assignment.

The claimant stated he was able to return to work "in mid-May" but did not contact the employer until June 21, 2005.

The claimant has received unemployment benefits since filing a claim with an effective date of May 22, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

The claimant was obligated by the terms of the employer's policies, which he received and signed, to notify the employer within three days of the end of his last assignment to request a new assignment. The administrative law judge concludes that the employer waived this requirement when Ms. Wolf contacted the claimant on April 20, 2005, to tell him to contact Manpower when he had gotten his personal life together and would be able to return to work.

However, the claimant chose not to contact the employer when he was able to return to work and instead waited over a month. This must be considered a decision on his part not to return to work and constitutes a voluntary quit without good cause attributable to the employer. He is disqualified.

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 July 1, 2005, reference 02, is reversed. C. Michael Pharaoh-Carlson 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 \$2,618.00.

bgh/kjf/tjc