

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

DENNIS T WOLFE
1109 – 33RD ST
BETTENDORF IA 52722

MANPOWER INTERNATIONAL INC
MANPOWER TEMPORARY SERVICES
C/O FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04O-UI-05895-BT
OC: 02/22/04 R: 04
Claimant: Respondent (4)

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 - Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Manpower Temporary Services (employer) appealed an unemployment insurance decision dated March 24, 2004, reference 02, which held that Dennis Wolfe (claimant) was eligible for unemployment insurance benefits. Administrative Law Judge Sheetz conducted an initial hearing on this matter in appeal 04A-UI-03970-S2T in which benefits were denied. The claimant appealed the decision indicating it did not participate due to lack of notice. The Employment Appeal Board remanded for a new hearing in an order dated May 21, 2004. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing

was held on June 17, 2004. The claimant participated in the hearing. The employer participated through Amy Pankey and Sherry Dupire.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 1, 2002 as a full-time drafter and was assigned to Mid-American Energy. The employer removed him from that assignment on February 20, 2004 due to misconduct but the claimant was not discharged from employment. The claimant was required to regularly call the employer to check in for additional assignments. He called the employer on March 2, 2004 but did not contact the employer after that date until the day of the first scheduled hearing. The employer's policies provide that if an employee fails to check in for additional assignments, he is considered to have voluntarily quit his employment.

The claimant filed a claim for unemployment insurance benefits effective March 24, 2004 and has received benefits after the separation from employment in the amount of \$1,610.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a. An individual who is a temporary employee of a temporary employment firm may be disqualified from receiving unemployment insurance benefits if the individual does not notify the temporary employment firm within three working days after ending a job assignment in an attempt to obtain another job assignment. To be disqualified from receiving benefits, at the time of hire the employer must advise the individual in writing of the three-day notification rule. The employer must also notify the individual that he may be disqualified from receiving unemployment insurance benefits if he fails to notify the employer. Iowa Code Section 96.5-1-j.

The evidence indicates the claimant knew or should have known he was required to contact the employer after he was discharged from that assignment so the employer knew he was available and/or could assign him to another job. The claimant contacted the employer on March 2, 2004 but not after that date. The claimant did not satisfy the requirements of Iowa Code Section 96.5-1-j and is disqualified from receiving unemployment insurance benefits as of February 21, 2004 with the exception of week ending March 6, 2004. Since he called in for an assignment on March 2, 2004 and none was available, he is eligible for benefits for that one week. Benefits are denied with the exception of week ending March 6, 2004.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated March 24, 2004, reference 02, is modified in favor of the appellant. The claimant is eligible for benefits for the one-week period ending March 6, 2004. He is disqualified for benefits prior to and subsequent to March 6, 2004. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,288.00.

sdb/kjf