

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GEORGE BELL
Claimant

APPEAL NO: 10A-UI-17279-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INC OF DES MOINES
Employer

OC: 10/31/10
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Manpower Inc. of Des Moines (employer) appealed an unemployment insurance decision dated December 14, 2010, reference 01, which held that George Bell (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 23, 2011. The claimant provided a telephone number but was not available when that number was called for the hearing, and therefore, did not participate. The employer participated through Theresa Bullock, Branch Manager. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation qualifies him to receive unemployment insurance benefits?

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 as a temporary production worker at a bird seed manufacturing plant on January 20, 2010. At the time of hire, the claimant signed an availability statement which advised him of the requirement to check in for additional work after the completion of an assignment. The employer requires employees to check in within three working days after an assignment ends to provide the employer notification of the claimant's availability and failure to do so would be considered as a voluntary quit. The claimant was given a copy of the availability statement, which is not part of the application or contract of employment.

The claimant's last assignment ended on November 1, 2010 when the contract employer asked the employer to remove him due to a poor attitude. Branch Manager Theresa Bullock notified the claimant on November 1, 2010 of the end of his assignment. She offered him an interview on November 2, 2010 for another position which he accepted. The claimant was offered the

position and sent for a drug screen. The drug screen company notified the employer that the sample was diluted and it could not be used. Ms. Bullock tried to contact the claimant by telephone numerous times between November 3, 2010 and November 15, 2010. He never answered and never returned the calls. The claimant did call the employer on November 20, 2010 and stated that he knew they were trying to get a hold of him but he had been called out of town.

The claimant filed a claim for unemployment insurance benefits effective October 31, 2010 and has received benefits after the separation from employment.

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 §§ 96.5-1 and 96.5-2-a.

In the case herein, the employer advised the claimant his assignment was over on November 2, 2010. The claimant interviewed for another assignment on November 3, 2010 and was offered the job pending a drug screen. The claimant went for the drug test but the drug screen company could not use the sample because it was diluted. The employer tried to reach the claimant from November 3, 2010 through November 15, 2010 but he never returned the calls and never contacted the employer until after that time.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by failing to contact the employer from November 3, 2010 through November 15, 2010.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has not satisfied that burden and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated December 14, 2010, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css