

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA E MASON

Claimant

APPEAL NO. 11A-UI-03723-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INTERNATIONAL INC

Employer

OC: 01/16/11

Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 14, 2011, reference 01, decision that allowed benefits in connection with a September 9, 2010 separation. After due notice was issued, a hearing was held on April 14, 2011. Claimant Joshua Mason did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Lori Sander, staffing specialist, represented the employer.

ISSUE:

Whether Mr. Mason separated from the employer for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Joshua Mason started a full-time, temp-to-hire work assignment on July 26, 2010 and performed work in that assignment until September 9, 2010, when he voluntarily quit due to a personality conflict with a supervisor. Mr. Mason did not complete the assignment. At the time Mr. Mason voluntarily quit the client business, the employer continued to have work for him in the assignment and the client business was interested in hiring Mr. Mason. On September 8, 2010, Manpower Staffing Specialist Lori Sander heard from the client business that Mr. Mason was unhappy in the assignment. On that day, Ms. Sander spoke with Mr. Mason, who assured her that things were fine.

On the morning of September 9, 2010, Ms. Sander received a telephone call from a supervisor at the client business. The supervisor indicated that Mr. Mason had arrived, packed his tools, and walked off the job. Ms. Sander contacted Mr. Mason and Mr. Mason came to the employer's office that morning to discuss his decision to leave the assignment. Mr. Mason told Ms. Sander that he did not get along with a supervisor, felt he was being treated unfairly, and had made the decision for personal reasons to quit the assignment. Mr. Mason indicated that he was not interested in a further assignment through Manpower. The employer left a message for Mr. Mason on September 14 regarding whether he would be willing to return to work for another client business. Mr. Mason did not respond to the message.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

When a worker voluntarily quits due to a personality conflict with a supervisor, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(22).

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Mr. Mason failed to participate in the hearing and thereby failed to present any evidence to establish that he completed the assignment or that he voluntarily quit for good cause attributable to the employer. The evidence in the record establishes that Mr. Mason did not complete the assignment, but instead voluntarily quit the assignment on September 9, 2010, due to a personality conflict with one of the supervisors. Mr. Mason's voluntary quit was without good cause attributable to the employer. Accordingly, Mr. Mason is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Mason.

Iowa Code section 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 section 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 would 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 Agency representative's March 14, 2011, reference 01, decision is reversed. The claimant voluntarily quit the employment on September 9, 2010 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

This matter is remanded 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw