

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHAN P WILSON
Claimant

APPEAL NO. 16A-UI-11766-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INC OF D M
Employer

OC: 09/25/16
Claimant: Appellant (1)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

STATEMENT OF THE CASE:

Jonathan Wilson filed a timely appeal from the October 21, 2016, reference 02, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits. The decision was based on an agency conclusion that Mr. Wilson had voluntarily quit the employment with the temporary employment firm effective September 23, 2016 by failing to contact the firm within three working days of completing a work assignment after being notified of his obligation to make such contact. After due notice was issued, a hearing was held on November 15, 2016. Mr. Wilson participated. Emma Wakefield, Professional Recruiter, represented the employer. Exhibits 2 through 8, C and D were received into evidence.

ISSUE:

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Manpower of Des Moines is a temporary employment agency. Jonathan Wilson established his employment relationship with Manpower in June 2015 and performed work in a single, full-time, temporary position at Cementech in Indianola. Mr. Wilson performed work at Cementech as an information technology (I.T.) systems network administrator and desk top support. Mr. Wilson's immediate supervisor at Cementech was Rob Gray, I.T. Projects Director. Cementech's human resources administrator was Michelle Eggleston. Mr. Wilson's work hours in the assignment were 7:30 a.m. to 5:30 p.m., Monday through Friday. Mr. Wilson's contact at Manpower was Emma Wakefield, Professional Recruiter.

At the start of the employment, Manpower had Mr. Wilson sign several documents that set forth a requirement to contact Manpower within three working days of completing an assignment. The employer provided Mr. Wilson with a copy of the documents he signed. One such document was titled "Manpower Contact Policy for Assignment Availability." That document states as follows:

To maintain employment eligibility with Manpower, you must keep us informed as to your availability. When you complete an assignment, immediately notify your Manpower

Staffing Specialist. You are then required to call us weekly to inform us of your availability status. If you fail to follow this policy, we will consider you unavailable for work and to have voluntarily resigned from employment. Further assignments may not be offered.

Unemployment Compensation: If you fail to comply with the Assignment Availability Policy, Unemployment Compensation may be denied. The Iowa Employment Security Law states that failure to call a temporary help agency within three days of the last assignment may result in denial of unemployment benefits.

By my signature below, I acknowledge that I understand my contact responsibilities as outlined in the Manpower Contact Policy for Assignment Availability.

Mr. Wilson signed the Assignment Availability policy on June 15, 2015.

Mr. Wilson completed the assignment at Cementech on Friday, September 23, 2016, when Cementech decided to terminate his work assignment. Prior to terminating the work assignment, Cementech had interviewed Mr. Wilson for a permanent I.T. position with Cementech. Cementech abruptly ended Mr. Wilson's assignment after selecting another employee for the permanent Cementech position. Mr. Gray escorted Mr. Wilson from the Cementech premises on September 23.

Mr. Wilson did not contact Manpower within three working days of completing the Cementech assignment. Instead, Mr. Wilson first made contact with Cementech on October 4, 2016, when he sent the following email message to Ms. Wakefield:

I want you to please verify that I am no longer employed with Manpower, since I believe you know that I was not selected for full time on 09/23/2016 at Cementech, and I have not heard from you about any other opportunities that I have seen posted with Manpower. Can you please verify this in writing, thanks.

Ms. Wakefield received the October 4, 2016 email the same day it was sent and responded within an hour. Ms. Wakefield thanked Mr. Wilson for reaching out to her. Ms. Wakefield acknowledged that she had received an email from Michelle Eggleston on September 23, 2016 indicating that the assignment had ended. Ms. Wakefield asked Mr. Wilson whether there were any Manpower opportunities that he saw and indicated that she would contact him if she had any openings that fit his skill set. Mr. Wilson responded and attached a link to a Manpower opening he had seen. Ms. Wakefield replied that the particular opening was with another recruiter out of the employer's Ames office and asked whether Mr. Wilson was willing to commute from his home in Indianola to Boone. The open assignment turned out to be in Paton, Iowa in Green County.

Though Mr. Wilson now asserts that he sent an exact duplicate of his October 4 email message on September 26, 2016, that assertion is untrue and that the purported email, Exhibit D is a fabricated document. The employer did not receive a September 26 email. Mr. Wilson made no reference to an earlier email when he sent his October 4 email.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

Manpower Contact Policy for Assignment Availability complied with the notice requirements set forth at Iowa Code section 96.5(1)(j). Manpower further complied with the statute by having Mr. Wilson sign the policy to acknowledge it and by providing Mr. Wilson with a copy of the document he had signed. Because Manpower complied with the statute, Mr. Wilson was

obligated to contact Manpower within three working days of the end of an assignment to indicate his availability for a new assignment and to request a new assignment. The weight of the evidence indicates that Mr. Wilson did not make the required timely contact with Manpower. As noted in the findings of fact, the employer did not receive a September 26 email from Mr. Wilson. Mr. Wilson made no mention of the earlier email when he sent his October 4 email. A reasonable person would expect to find reference to the purported earlier email in the October 4, 2016 correspondence. The administrative law judge notes that Mr. Wilson made no mention of a September 26 email at the time of the October 20, 2016 fact-finding interview. According to the claims deputy's notes, Mr. Wilson's statement at the fact-finding interview was as follows:

I took one assignment with Manpower and completed it. It [sic] was suppose [sic] to leave in June and it was extended until September. I did not notify Manpower as they were aware of it. I e mailed [sic] Emma around the 10th of October to ask for a new assignment. I assumed that she knew about the ending of the assignment and did not contact her within the 3 days. I did not know that I had to do that.

As indicated in the findings of fact, the weight of the evidence establish that the purported September 26, 2016, Exhibit D, is a fabricated document. The fabrication was well within Mr. Wilson's skill set. Mr. Wilson had a motive to fabricate the document. The evidence further indicates that Mr. Wilson fabricated the exhibit in an attempt to mislead the administrative law judge and pervert the adjudicative process.

Because Mr. Wilson failed to comply with the employer's end-of-assignment policy and that statute by failing to make contact with Manpower within three working days of completing the assignment to request a new assignment, his September 23, 2016 separation from Manpower was a voluntary quit without good cause attributable to that employer. Mr. Wilson is disqualified for benefits until he has worked in and been paid wages equal to 10 times his weekly benefit amount. Mr. Wilson must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The October 21, 2016, reference 02, decision is affirmed. The claimant voluntarily quit the employment on September 23, 2016 without good cause attributable to the temporary employment firm by failing to make contact with the employer within three working days of the completion of an assignment after being notified of his obligation to make such contact. The claimant is disqualified for benefits until he has worked in and been paid wages equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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