

**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**

**KELLY J MCANINCH  
4100 HUBBLE AVE #84  
DES MOINES IA 50317**

**MANPOWER INC OF DES MOINES  
517 – 5<sup>TH</sup> AVE  
DES MOINES IA 50309**

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**Appeal Number: 04A-UI-03611-AT  
OC: 07-20-03 R: 02  
Claimant: Respondent (1)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Manpower, Inc. of Des Moines filed a timely appeal from an unemployment insurance decision dated March 18, 2004, reference 06, which allowed benefits to Kelly J. McAninch. After due notice was issued, a telephone hearing was held April 19, 2004 with Ms. McAninch participating. Staffing Specialist Sarah Dahm participated for the employer.

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: Kelly J. McAninch worked on assignment for Manpower, Inc. at Principal Financial Group from August 4, 2003 until January 30, 2004.

Ms. McAninch suffers from Erb's paralysis, a medical condition which restricts her motion. She was first assigned strictly to data entry duties in connection with her assignment at Principal. Later she was assigned to additional duties by Ginny Wolf, On-Site Supervisor for Manpower. This included additional duties plus the work of two other individuals. Ms. McAninch advised Ms. Wolf in early January 2003 that the additional duties were causing problems because of her medical condition. No adjustment or accommodation had been made prior to January 30, 2004.

On January 26 or January 27, 2004 a quantity of toner spilled onto Ms. McAninch's clothing and chair, ruining some articles of clothing and creating an allergic reaction. Ms. McAninch missed worked for several days, returning on January 30, 2004. On that day she sent an e-mail to Ms. Wolf to inquire if it were possible to get reimbursement from Manpower for the ruined clothing and for some rings which were required to be cut off her fingers. Ms. Wolf's response was to confront Ms. McAninch in front of 10 to 15 coworkers, asserting that Ms. McAninch was not communicating with her and was not meeting Manpower quality standards. Ms. McAninch had received no warnings and has received a satisfactory evaluation. It was then mutually agreed between Ms. McAninch and Ms. Wolf that Ms. McAninch's assignment should come to an end.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that Ms. McAninch's separation from employment was a disqualifying event. It does not.

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.

Ms. McAninch testified that Ms. Wolf did not request that she resign. The administrative law judge thus concludes that Ms. McAninch voluntarily chose to end the assignment. An individual may receive unemployment insurance benefits following a resignation if the resignation was for intolerable or detrimental working conditions. See 871 IAC 24.26(4). The evidence establishes that Ms. McAninch's concerns about her health being adversely effected by her increased duties were not being addressed by her supervisor. It establishes that her inquiry about reimbursement following the toner spill resulted in her being berated in front of coworkers. Since this evidence was not rebutted, the administrative law judge concludes that intolerable and detrimental working conditions have been established. Benefits are allowed.

The administrative law judge inquired as to why Ms. Wolf was not called to testify. The employer's witness stated that she was not the one who chose who would participate in the hearing. The employer in essence relied upon hearsay evidence when first-hand evidence was available. The administrative law judge may fairly infer from this that Ms. Wolf's testimony would have disclosed weaknesses in the employer's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

DECISION:

The unemployment insurance decision dated March 18, 2004, reference 06, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

tjc/b