

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD M MCCOLLAR
Claimant

APPEAL NO: 06A-UI-08370-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INC
Employer

**OC: 07/16/06 R: 02
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Manpower (employer) appealed a representative's August 10, 2006 decision (reference 01) that concluded Donald McCollar (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 6, 2006. The claimant did not provide a telephone number where he could be reached and, therefore, did not participate. The employer participated by Cindy Lunning, Staffing Specialist.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer and is not, therefore, eligible 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 on March 3, 2006, as a temporary full-time general laborer assigned to work at Welp, Inc. The claimant was absent a number of times. On July 14, 2006, the claimant was absent and did not notify the employer of his absence. The employer telephoned the claimant. The claimant said he was sick and could not work. The employer told the claimant that his assignment had ended due to too many absences. The claimant told the employer that he was looking for work elsewhere and was planning on taking another position.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer and is not eligible to receive unemployment insurance benefits.

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.

Iowa Code section 96.5-1-a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his words and actions. He told the employer that he was leaving to look at work elsewhere. When an employee quits work to seek other unsecured employment, his leaving is without good cause attributable to the employer. The claimant left work to seek but had not secured other employment. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

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.

The claimant has received benefits in the amount of \$957.00 since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's August 10, 2006 decision (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 claimant is overpaid benefits in the amount of \$957.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/cs