

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

MATTHEW K MILLER  
1011 BIRCH ST  
ATLANTIC IA 50022

MANPOWER INTERNATIONAL INC  
MANPOWER TEMPORARY SERVICES  
C/o FRICK UC EXPRESS  
PO BOX 66864  
ST LOUIS MO 63166-6864

Appeal Number: 06O-UI-01146-JTT  
OC: 09/25/05 R: 01  
Claimant: Respondent (2)

**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, 4th 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  
871 IAC 24.26(6)(b) – Separations Not Considered to Be Quits

STATEMENT OF THE CASE:

Manpower International filed a timely appeal from the October 13, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 15, 2006. Claimant Matthew Miller participated. The employer did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the transcript of the hearing in Appeal Number 05A-UI-10802-LT, in which the employer had participated and presented evidence. The claimant had appealed the decision in that matter and the Employment Appeal Board remanded the matter for further hearing, giving rise to the present decision.

## FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Matthew Miller was employed through Manpower Temporary Services from July 2004 until December 28, 2004. Mr. Miller's last assignment was light-duty work at Eaton's in Shenandoah.

Mr. Miller had previously performed full-time maintenance work for Houghton Fluid Care at Eaton's production plant in Shenandoah. Mr. Miller has a history of chronic back problems. On November 15, 2004, Mr. Miller experienced pain in his back while at work. Mr. Miller was not scheduled to work on November 16. Mr. Miller was scheduled to work on November 17, but was still experiencing pain and decided to go to the emergency room. Dr. Brian Couse, M.D., diagnosed "lumbar back strain," recommended physical therapy, prescribed medication and recommended that Mr. Miller follow up with a local doctor. Dr. Couse provided Mr. Miller with a note that excused him entirely from work until the following Monday and the restricted Mr. Miller to light duty. While at the hospital, Mr. Miller telephoned the number for his supervisor at Houghton Fluid Care and left a voice mail message indicating that he had hurt his back at work on November 15. Mr. Miller understood that he only needed to contact Houghton Fluid Care regarding an absence and did not call Manpower to report the absence. Mr. Miller had no further contact with Houghton Fluid Care. On November 18, Mr. Miller delivered the note from Dr. Couse to Manpower.

On November 19, Mr. Miller went to the emergency room due to increased pain and was examined by Dr. William Butz, M.D. Dr. Butz provided Mr. Miller with a medical release that completely excused Mr. Miller from until December 21, and then restricted him to light duty status. On November 19, Mr. Miller contacted Manpower to advise of his health status.

On December 12, 2004, Mr. Miller had a follow-up clinic visit with Dr. Butz. The doctor diagnosed "lumbar back strain" and "history of prior compression fracture and lumbar back injury." Dr. Butz released Mr. Miller to return to work on December 20, 2004, with restrictions on bending, and stooping, and a 40-pound restriction on lifting, pushing, and pulling. Dr. Butz recommended that Mr. Miller participate in physical therapy and return in two weeks for reassessment.

On December 21 Mr. Miller commenced the light-duty assignment at Eaton's. Mr. Miller had submitted a workers' compensation claim in connection with the back strain. The employer commenced its investigation of the claim during the week of December 20. Mr. Miller became upset that the workers' compensation claim investigator challenged Mr. Miller's assertion that he had suffered injury at work. The insurance carrier denied the claim. On December 28, 2004, Mr. Miller contacted Manpower and advised that he was quitting. Mr. Miller's doctor had not recommended that he quit the employment.

On December 27, 2004, Mr. Miller returned to Dr. Butz for reassessment. Dr. Butz noted that Mr. Miller had not followed through with physical therapy, but had continued home exercise. The back pain had subsided and Mr. Miller indicated a desire to return to regular work duties. Mr. Miller had been performing only limited work before that time. Dr. Butz diagnosed the following: 1) chronic lumbar back pain, 2) compression fracture at L1, old, and 3) spondylolisthesis L5 on S1. Dr. Butz released Mr. Miller to work but kept the 40-pound lifting, pushing, and pulling restriction in place.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Miller's quit was for good cause attributable to the employer. 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.

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.

The evidence in the record establishes that Mr. Miller's quit had little to do with his health condition. Mr. Miller quit because he was unhappy with the response to the workers' compensation claim. The employer demonstrated a willingness to accommodate Mr. Miller's health limitations and had been doing so at the time of the quit. Continued work was available.

The evidence in the record indicates that Mr. Miller voluntarily quit the employment without good cause attributable to the employer. Accordingly, Mr. Miller 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. Miller.

## DECISION:

The Agency representative's decision dated October 13, 2005, reference 01, is reversed. The claimant voluntarily quit the employment 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.

jt/kjw