

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

BRENT A FAHRENKRUG  
113½ W FAYETTE  
MANCHESTER IA 52057

MANPOWER INC OF CEDAR RAPIDS  
1220 INDUSTRIAL AVE  
HIAWATHA IA 52233

Appeal Number: 04A-UI-08701-H2T  
OC: 07-07-04 R: 04  
Claimant: Appellant (4)

**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-g – Voluntary Leaving/Requalification

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 9, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 2, 2004. The claimant did participate. The employer did participate through Deb Chamberlin, Risk Control Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was first employed by Manpower on November 23, 2003. He began his last assignment on November 25, 2003 at Rite-Hite Corporation as a machinist where he worked until January 16, 2004. Rite-Hite Corporation laid off the claimant due to lack of work on January 16, 2004. The claimant alleges that he went straight from Rite-Hite Corporation to the

Manpower office on the same day he was laid off and told someone at Manpower that he had been laid off. The claimant also alleges that he asked for additional work at that time but was told none was available for him. The claimant alleges that he continued to call Manpower on a weekly basis to ask for additional assignments but none were given to him. The employer has no record of the claimant reporting the end of his assignment nor do they have any record that the claimant ever called even one time after his assignment at Rite-Hite ended to look for additional work. Manpower was notified by Rite-Hite on January 17, 2004 that the claimant's assignment had ended. As part of their regular business practices, the employer keeps records of when employees call or come in to seek work.

The claimant began working for another employer in April 2004 and has earned \$6,258.00 since his employment with Manpower ended. The claimant's weekly benefit amount is \$127.00. Since his employment with Manpower ended, the claimant has earned ten times his weekly benefit amount.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer but has requalified for benefits.

Iowa Code Section 96.5-1-g-j provide:

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:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

j. 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.

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.

For the purposes of this paragraph:

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

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

871 IAC 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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2 (amended 1998).

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of the temporary assignment so they may be reassigned and continue working. In this case, the claimant gave the employer no notice of the claimant's availability and, therefore, is considered to have quit the employment. While it is, of course, possible that Manpower could have missed logging one of the claimant's alleged calls for work or one of his visits to the office, the administrative law judge is not persuaded that all of the calls or visits would not have been logged. The administrative law judge concludes that the claimant did not visit the Manpower office or call the office as he has claimed he did. The claimant was not even sure at the hearing what his last day of work for Rite-Hite was and changed his testimony three times before settling on a final working date. If the claimant was unable to remember his final date worked, how could he remember with any accuracy the date he allegedly went to the Manpower office to notify them of his layoff. The totality of the evidence persuades the administrative law judge that the claimant failed to notify Manpower within three days of the end of his assignment.

However, the administrative law judge further concludes from information contained in the administrative record that the claimant has requalified for benefits since the separation from this

employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The August 9, 2004, reference 01, decision is modified in favor of the appellant. The claimant quit without good cause attributable to the employer but has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

tkh/tjc