

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

EVELYN VEST
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BEDFORD IA 50833

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

Appeal Number: 06A-UI-03625-BT
OC: 04/03/05 R: 01
Claimant: Appellant (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, 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

Evelyn Vest (claimant) appealed an unemployment insurance decision dated March 21, 2006, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Manpower Temporary Services (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 19, 2006. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate.

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 originally hired in July 2004 and there was a break in employment until May 2005 when she was rehired. She worked as a full-time temporary laborer through February 26, 2006. Her treating physician placed her on a medical restriction requiring her to have a "sit-down" job, as a result of her pregnancy. The claimant has not yet received a full medical release from the treating physician.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code Section 96.5-1. The claimant left her employment on February 26, 2006 due to a non-work-related medical condition.

Iowa Code Section 96.5-1-d 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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(35) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

(a) Obtain the advice of a licensed and practicing physician;

- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The claimant stopped working due to medical restrictions from a non-work-related medical condition. An employer is not responsible for accommodating non-work-related medical restrictions. The claimant would only be eligible for benefits if her position were not available to her after her recovery. A "recovery" under Iowa Code Section 96.5-1-d means a complete recovery without restriction. White v. Employment Appeal Board, 487 N.W.2d 342, 345 (Iowa 1992) (citing Hedges v. Iowa Department of Job Service, 368 N.W.2d 862, 867 (Iowa App. 1985)). The claimant has not yet been released to return to full work duties. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The unemployment insurance decision dated March 21, 2006, reference 01, is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount provided she is otherwise eligible.

sdb/tjc