

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

JAMES D MESSENGER
907 W TYLER AVE
FAIRFIELD IA 52556-4059

MANPOWER INC OF CEDAR RAPIDS
1220 INDUSTRIAL AVE
HIAWATHA IA 52233-1155

Appeal Number: 06A-UI-03110-DWT
OC: 07/17/05 R: 03
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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Manpower Inc. of Cedar Rapids (employer) appealed a representative's March 7, 2006 decision (reference 04) that concluded James D. Messenger (claimant) was qualified to receive unemployment insurance benefits, and the employer's account could be subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 5, 2006. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Debra Chamberlain, the risk control manager, appeared on the employer's behalf. During the hearing, Employer's Exhibits One, Two and Three were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant registered to work for the employer on September 9, 2005. The claimant received a copy of the employer's alcohol, drug-screen program and consent form. The policy informs employees they may be requested to submit to a pre-assignment drug screening for particular clients. If a person signs a consent form, failure to comply with a requested drug test are grounds for immediate termination. The claimant signed the drug consent form on September 9, 2005. (Employer's Exhibits One and Two)

The first client the employer assigned the claimant to on September 13, 2005, did not require the claimant to take a drug test. The claimant completed this job assignment on January 16, 2006. That same day, January 16, the employer offered the claimant another job. This job required the claimant to take a pre-employment drug test.

The employer told the claimant the drug test was scheduled the next day. The claimant did not indicate he had any problems getting to Mount Pleasant to take the drug test for a new client. The claimant did not take the drug test on January 17, 2006. The claimant did not contact the employer anytime on January 17 indicating he could not get to Mount Pleasant that day.

On January 18, 2006, the employer informed the claimant he was discharged for refusing to take a drug test on January 17, 2006. (Employer's Exhibit Three) The claimant did not contact the employer until February 15, 2006. On this date, the claimant informed the employer he did not have transportation to get to Mount Pleasant (a 30-minute drive) the day of the drug test. The employer then informed the claimant what steps he needed to take for the employer to rehire him and assign him to other assignments. As of the date of the hearing, the claimant has not yet provided the necessary documentation to the employer.

The claimant established a claim for unemployment insurance benefits during the week of February 5, 2006. The claimant filed claims for the weeks ending February 11 through March 18, 2006. He received a total of \$648.00 in benefits for these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer discharged the claimant on January 18, 2006.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's

interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

On September 9, the claimant signed a consent form indicating he would take any requested drug tests that may be required before the employer could assign him to a job. The claimant also knew or should have known the employer would discharge him if he failed to take a requested drug test. The employer discharged the claimant pursuant to its drug test policy for failing to take a requested pre-assignment drug test on January 17, 2006. The claimant's failure to timely contact the employer on January 17 or shortly after he received the termination letter in addition to his excuse that he did not have transportation on January 17, 2006, are all factors establishing work-connected misconduct. As of February 5, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending February 11 through March 18, 2006. The claimant has been overpaid \$648.00 in benefits he received for these weeks.

DECISION:

The representative's March 7, 2006 decision (reference 04) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 5, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending February 11 through March 18, 2006. The claimant has been overpaid and must repay a total of \$648.00 in benefits he received for these weeks.

dlw/kkf