

**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**

**KARI L BOWEN
945 S WEBSTER ST
OTTUMWA IA 52501**

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

**Appeal Number: 04A-UI-09453-CT
OC: 08/08/04 R: 03
Claimant: Respondent (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(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Manpower, Inc. of Cedar Rapids filed an appeal from a representative's decision dated August 25, 2004, reference 01, which held that no disqualification would be imposed regarding Kari Bowen's separation from employment. After due notice was issued, a hearing was held by telephone on September 27, 2004. Ms. Bowen participated personally. The employer participated by Debra Chamberlain, Risk Control Manager. Exhibits One through Four were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Bowen was employed by Manpower from October 13, 2003 until August 6, 2004 as a full-time, temporary staffing specialist. She was discharged because of her attendance.

All of Ms. Bowen's absences of a full day were due to either her own illness or that of her child. All of the absences were properly reported to the employer. She had been late reporting to work on some occasions but none after June of 2004. Ms. Bowen was warned about her attendance on March 1, June 3, and June 11, 2004. Her final absences began on August 2. She provided medical documentation of the need to be absent from August 2 through August 4. She was still ill on August 5 and August 6. Ms. Bowen was notified of her discharge on August 6. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Bowen was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences. Moreover, there must be a current incident of unexcused absenteeism in relation to the discharge date.

All of Ms. Bowen's absences of a full day are considered excused as they were properly reported and were for reasonable cause, either her own illness or that of her child. Although there had been a past problem with tardiness, the problem had been corrected in June. Therefore, there was no current act of unexcused absenteeism in relation to the discharge date. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated August 25, 2004, reference 01, is hereby affirmed. Ms. Bowen was discharged by Manpower but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/s