

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MARTALISIA PESINA

Claimant

APPEAL NO. 07A-UI-08428-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INC OF CEDAR RAPIDS

Employer

**OC: 07/29/07 R: 02
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Martalisia Pesina filed an appeal from a representative's decision dated August 23, 2007, reference 01, which allowed benefits from July 28, 2007 until August 11, 2007 finding the claimant was terminated on July 24, 2007 after resigning her position effective August 8, 2007. After due notice was issued, a hearing was held by telephone on September 18, 2007. Ms. Pesina participated personally. The employer participated by Debbie Chamberlin and Rob Vogt. Employer's Exhibit One was received into evidence.

ISSUE:

The issue in this matter is whether the claimant left her employment effective August 8, 2007 for reasons that were attributable to the employer and whether the claimant was discharged for misconduct on July 24, 2007.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked as a permanent staffing specialist for the captioned company from April 19, 2004 until July 24, 2007. Ms. Pesina was paid by the hour and was expected to work from 8:00 a.m. to 5:00 p.m. unless a variance of the schedule was authorized in advance. Her immediate supervisor was Rob Vogt.

On July 24, 2007, the claimant verbally informed her supervisor, Mr. Vogt, of her intention to resign effective on or about August 8, 2007. Based upon what the employer reasonably considered to be a downward turn in the claimant's attitude, punctuality and leaving early, a decision was made to accept the claimant's resignation effective that day, July 24, 2007. On July 19, and 20, 2007, Ms. Pesina had varied from her normal working hours by arriving late and leaving early without the specific advanced permission of her supervisor, Mr. Vogt. On July 23, 2007, the claimant called in to indicate that she was taking personal time off. On July 24, after giving her resignation, the claimant left at 9:30 a.m. without advanced permission.

The employer considered it in its best interest to not allow the claimant to continue in employment during the notice period and did end the claimant's employment effective July 24, 2007.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the claimant did indicate and tender her verbal resignation on July 24, 2007 to be effective on or about August 8, 2007. The claimant's leaving was caused by general dissatisfaction with her new supervisor and the requirement that the claimant follow company policy. The administrative law judge finds that the claimant's reasons for leaving were not caused by the employer. The employer/supervisor was reasonable in requiring the claimant to adhere to mileage procedures, set working hours and other employment-related factors.

On July 24, 2007, the claimant was terminated from her employment prior to the effective date of her leaving because of a business decision made by the supervisor to remove the claimant from the work place due to her general undependability.

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

For the reasons stated herein, the administrative law judge finds: The claimant is eligible to receive unemployment insurance benefits from the date of her termination, July 24, 2007, until August 11, 2007, the effective date of the claimant's resignation for reasons that were not attributable to the employer.

DECISION:

The representative's decision dated August 23, 2007, reference 01, is hereby affirmed. The claimant is eligible to receive unemployment insurance benefits from the date of her termination until the date of her resignation, providing she meets all other eligibility requirements. Claimant is eligible to receive benefits from July 28, 2007 until August 11, 2007 and is ineligible thereafter until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs