

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WAGGONER, RICHARD, W
Claimant

APPEAL NO. 13A-UI-03908-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INTERNATIONAL INC
Employer

OC: 09/02/12
Claimant: Appellant (5-R)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Richard Waggoner filed a timely appeal from the March 29, 2013, reference 03, decision that disqualified him for unemployment insurance benefits and that relieved the employer from liability for benefits. After due notice was issued, a hearing was held on May 6, 2013. Mr. Waggoner participated. Bill Schiller, Branch Manager, represented the employer and presented additional testimony through Carrie Jaeger, Staffing Specialist.

ISSUE:

Whether Mr. Waggoner separated from his assignment at Oskaloosa Engineering and Manufacturing and/or his employment with Manpower International, Inc., for a reason that disqualifies him for unemployment insurance benefits. The administrative law judge concludes that Mr. Waggoner was discharged from both for excessive unexcused absences that constituted misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Manpower International, Inc., is a temporary employment agency. Richard Waggoner began his employment relationship with Manpower in September 2011 and last performed work for Manpower in an assignment at Oskaloosa Engineering and Manufacturing. The assignment was full-time temporary. The work hours were 3:30 p.m. to midnight, Monday through Friday. The assignment started on September 12, 2012. The supervisor at Oskaloosa Engineering and Manufacturing was Brandon Graham, Production Manager. Mr. Waggoner last performed work in the assignment on Friday, March 1, 2013.

Mr. Waggoner was next scheduled to work on Monday, March 4, 2013. Mr. Waggoner did not report for work because he had wrecked his truck in a weather-related accident in or near Davenport. Mr. Waggoner made contact with Mr. Graham that morning to indicate he would be absent. Mr. Waggoner did not make contact with Manpower to indicate he would be absent. At the start of Mr. Waggoner's employment with Manpower, Manpower had Mr. Waggoner go through an orientation that included watching a video on the employer's policies. The policies reviewed in the video included the requirement that Mr. Waggoner contact Manpower prior to

the scheduled start of his shift if he needed to be gone from a work assignment. The employer had Mr. Waggoner sign his acknowledgment of that policy review as well as acknowledge receipt of an employee handbook. Mr. Waggoner signed for both on September 7, 2011. In addition to Manpower's absence reporting policy, Manpower had notified Mr. Waggoner that he also needed to give notice to Oskaloosa Engineering and Manufacturing if he needed to be absent from his work assignment.

On Tuesday, March 5, 2013, Mr. Waggoner was again absent due to a lack of transportation. Mr. Waggoner notified Mr. Graham that morning that he would be absent, but did not notify Manpower. On Wednesday, March 6, Mr. Waggoner was again absent due to a lack of transportation. Mr. Waggoner again notified Mr. Graham that morning they would be absent, but did not notify Manpower. On Thursday and Friday, March 7 and 8, Mr. Waggoner was absent due to a lack of transportation and made no contact either with Oskaloosa Engineering and Manufacturing or with Manpower. After that, Mr. Waggoner would next have been scheduled to work on Monday, March 11.

On Friday, March 8, Mr. Graham contacted Manpower by email to see if they had heard from Mr. Waggoner. They had not. On Monday, March 11, Mr. Graham contacted manpower to indicate that Oskaloosa Engineering and Manufacturing was ending the assignment due to attendance.

On March 11, Bill Schiller, Manpower Branch Manager, telephoned Mr. Waggoner and told him that he was discharged from the assignment at Oskaloosa Engineering and Manufacturing and from the employment relationship with Manpower.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that Mr. Waggoner was discharged due to excessive unexcused absences. Each of Mr. Waggoner's five consecutive absences, all due to a lack of transportation, was an unexcused absence under the applicable law. The fact that Mr. Waggoner did not properly report any of the five absences to Manpower also made them unexcused absences. The fact that Mr. Waggoner did not report the March 7 and 8 absences to Oskaloosa Engineering and Manufacturing also made those absences unexcused.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Waggoner was discharged for misconduct. Accordingly, Mr. Waggoner is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Waggoner.

Mr. Waggoner's continued lack of transportation suggests he has not met the work availability requirement since he established his claim for benefits. The matter will be remanded to the Claims Division for determination of whether Mr. Waggoner has been available for work since he filed the additional claim for benefits that was effective March 10, 2013.

DECISION:

The Agency representative's March 29, 2013, reference 03, decision is modified as follows. The claimant was discharged on March 11, 2013 from a temporary work assignment and from employment with the temporary employment agency for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account shall not be charged.

The matter is remanded to the Claims Division for determination of whether the claimant has been available for work since he filed the additional claim for benefits that was effective March 10, 2013.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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