

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

ADAM J LARY
111 SCHOOL ST
DOWS CITY IA 51528

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

Appeal Number: 06A-UI-03169-AT
OC: 02/12/06 R: 01
Claimant: Respondent (1-R)

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 95.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Manpower International, Inc. filed a timely appeal from an unemployment insurance decision dated March 10, 2006, reference 02, which allowed benefits to Adam J. Lary. After due notice was issued, a telephone hearing was held March 31, 2006, with Mr. Lary participating. The employer did not provide the name and telephone number of a witness.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Adam J. Lary was employed by Manpower

International, Inc. from January 1, 2005 until he was discharged January 18, 2006. He worked on assignment at Premium Protein Products. Mr. Lary had arranged to take the day off on January 17, 2006 for a job interview. He was discharged on the following day at the instruction of Premium Protein Products for not returning to work after the interview.

Mr. Lary was subsequently rehired by Manpower and discharged on or about February 2, 2006.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the separation from employment on January 18, 2006 was a disqualifying event. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer, the party with the burden of proof, did not participate in the hearing. The claimant's testimony establishes that he had received permission to take the entire day off. No disqualification may be imposed under these circumstances.

Testimony indicates a second separation from employment occurring on or about February 2, 2006. It does appear from agency records that the agency has determined the unemployment insurance consequences of the subsequent separation. This matter is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated March 10, 2006, reference 02, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible. The issue of the unemployment insurance consequences of the separation occurring on or about February 2, 2006 is remanded to the Unemployment Insurance Services Division.

cs/tjc