

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELE L GRAHAM
Claimant

**APPEAL NO. 06A-UI-
ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INC OF D M
Employer

**OC: 09/25/06 R: 02
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Michele Graham filed a timely appeal from the October 30, 2006, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on November 20, 2006. Ms. Graham participated. Although duly notified there was no participation by the employer.

ISSUE:

Whether the claimant voluntarily left employment under disqualifying reasons or was the claimant discharged for misconduct in connection with her work.

FINDINGS OF FACT:

Having reviewed all the evidence in the record the administrative law judge finds: Michele Graham was employment by Manpower Inc. in Des Moines, Iowa, from April 2006 until September 25, 2006 when she was discharged by the employer. The claimant was assigned to work at the Ever Bank as a telephone/clerical worker and was paid by the hour.

The claimant was discharged on September 25, 2006 when Manpower Inc. informed the claimant that she was being discharged due to “low productivity.” During the time that she was on the most recent assignment Ms. Graham performed her duties to the best of her ability and had received no warnings or complaints from either the client or Manpower Inc. before being discharged. Based upon her discharge from Manpower Inc. the claimant was not eligible to apply for reassignments with that temporary employment service.

REASONING AND CONCLUSIONS OF LAW:

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.

In this case the administrative law judge finds that the employer has not sustained its burden of proof in establishing intentional disqualifying misconduct on the part of this claimant. Ms. Graham appeared personally and testified that she performed her duties to the best of her abilities at all times and received no warnings, counselings or complaints from either Manpower Inc. or the client employer before being discharged on September 25, 2006. In discharge cases the employer bears the burden of proof in establishing disqualifying misconduct on the part of a claimant. Although given the opportunity to participate in the hearing on this matter the employer declined to do so. Based upon the hearing record the administrative law judge must find that the claimant's separation from employment took place under nondisqualifying conditions.

DECISION:

The Agency representative's October 30, 2006, reference 02, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided that she is otherwise eligible. The employer's account may be charged.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css