

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

VICKI D STEVENS  
406 GARFIELD  
SHENANDOAH IA 51601

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

Appeal Number: 05A-UI-03431-SWT  
OC: 02/20/05 R: 01  
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, 4<sup>th</sup> 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  
Section 96.5-3-a - Failure to Accept Suitable Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 28, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 21, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Todd Ashenfeter participated in the hearing on behalf of the employer. The parties agreed that the issue of whether the claimant failed to accept an offer of suitable work without good cause could be considered and decided in this case.

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked full time for the employer on an assignment at Eaton

Corporation from December 10, 2004, to February 14, 2005. Eaton Corporation asked the employer to remove the claimant from the assignment because the Eaton Corporation had terminated her 32 years earlier when the claimant worked there. Eaton Corporation has a policy prohibiting the reemployment of terminated employees. When the claimant was hired, she was not asked about whether she had worked for Eaton Corporation before and was unaware of the policy.

On February 15, 2005, a staffing specialist contacted the claimant and offered her a job at NSK Company in Clarinda, Iowa. The claimant received the call at noon, and the job was to start at 11:00 p.m. that evening. The claimant told the staffing specialist that she might have been able to swing it if she had been given more notice but could not accept the job that evening because her husband needed their car and she had no other way of getting to work. The staffing specialist said okay and did not offer any other options.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

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 has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. There is no evidence of work-connected misconduct by the claimant in this case. The claimant's testimony that she was never asked about past employment at Eaton Corporation and was unaware of Eaton's policy was convincing.

The next issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause under Iowa Code section 96.5-3. The evidence establishes that the claimant had good cause to turn down the work assignment, which was offered to her on the same day that the assignment was to start.

#### DECISION:

The unemployment insurance decision dated March 28, 2005, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/pjs