

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

ETHEL L ASHBY
318 N PENN
MASON CITY IA 50401-3444

MANPOWER INC OF CEDAR RAPIDS
1220 INDUSTRIAL AVE
HIAWATHA IA 52233-1155

Appeal Number: 06A-UI-04653-RT
OC: 03/26/06 R: 02
Claimant: Appellant (2-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 96.5-1 – Voluntary Quitting
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Ethel L. Ashby, filed a timely appeal from an unemployment insurance decision dated April 28, 2006, reference 04, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on May 16, 2006, with the claimant participating. Debbie Chamberlain, Risk Control Manager, participated in the hearing for the employer, Manpower, Inc., of Cedar Rapids. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant began employment with the employer on or about October 22, 2004. The employer is a temporary employment agency. The claimant's last assignment that she worked was with Sunny Fresh Foods which ended on April 11, 2005. The claimant satisfactorily completed this assignment. The employer offered the claimant another one-day assignment on April 15, 2005 with American Theatre Arts for Youth to be worked on April 19, 2005. The claimant accepted this assignment but then called the employer on April 17, 2005 and informed the employer that her daughter was taken to the hospital and she would not be able to work that assignment. The claimant called the employer again on April 19, 2005 and informed the employer that her daughter had tried to commit suicide and she had to take care of her granddaughter for whom she has custody. The claimant informed the employer that she could not therefore work. The claimant called the employer on April 21, 2005 and indicated that she was available for assignments but there were no assignments available. The claimant called the employer on April 25, 2005 and informed the employer that she had a job with Crescent Park for which she worked two or three days but her assignment ended because the claimant did not work fast enough. The claimant then called the employer on May 6, 2005 regarding her pay summary. The claimant at that time was not seeking work but was on disability and needed paperwork from the employer. The claimant called on May 20, 2005 and August 20, 2005 looking for work but no positions were available. At some point the claimant also had an assignment at RM Enterprises which lasted three days. It was supposed to be longer but the claimant's work was not satisfactory. The claimant also at some point worked at Aspen Hills four or five months. The claimant has some disabilities and is under the assistance of a mental healthcare manager. The claimant did not file for unemployment insurance benefits until an effective date of March 26, 2006 because she believed that she was still employed by the employer because she kept calling but there were no assignments.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was not.
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.

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 first issue to be resolved is the character of the separation. The employer maintains that the claimant quit when she refused an assignment for April 19, 2005 which she had previously accepted. The claimant seemed to maintain that she was laid off for a lack of work. The administrative law judge concludes that the claimant was, in effect, laid off for a lack of work. The claimant, at least according to the testimony of the employer's witness, Debbie Chamberlain, Risk Control Manager, satisfactorily completed her assignment with Sunny Fresh Foods on April 11, 2005. The next assignment was to be a one-day assignment on April 19, 2005 at American Theatre Arts for Youth. Initially the claimant accepted that assignment but had notified the employer that she could not take that assignment because her daughter had been taken to the hospital and then later had tried to commit suicide. The administrative law judge concludes that the claimant had good cause for refusing to work the one-day assignment. The administrative law judge notes that this was only a one-day assignment. Thereafter, as set out in the Findings of Fact, the claimant contacted the employer periodically for work but none was available. Accordingly, the administrative law judge concludes that the claimant was essentially laid off for a lack of work. The administrative law judge does not believe that the claimant's refusal of the one-day assignment noted above was a voluntary quit. There is little evidence that the claimant was discharged and even if she was discharged, there is not a preponderance of the evidence that she was discharged for any kind of disqualifying misconduct. The claimant kept in reasonable contact with the employer for positions and the administrative law judge concludes that the claimant complied with Iowa Code section 96.5(1)(j) by notifying the employer of the completion of her assignment and seeking reassignment within three working days and, therefore, the claimant is not deemed to have voluntarily quit under that code section. Accordingly, the administrative law judge concludes that the claimant did not voluntarily leave her employment nor was she discharged but rather she was laid off for a lack of work and this is not disqualifying. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible.

In order to determine whether the claimant is otherwise eligible for unemployment insurance benefits, this matter must be remanded to Claims for an investigation and determination as to whether the claimant might be ineligible to receive unemployment insurance benefits because, at relevant times, she is, and was, not able, available, and earnestly and actively seeking work. This issue was not set out on the notice of appeal and therefore the administrative law judge does not now have jurisdiction to decide that issue. However, serious and substantial questions concerning whether the claimant is, and was, able, available, and earnestly and actively seeking work, appeared during the hearing concerning the claimant's separation from employment. The claimant stated that her daughter was hospitalized and then tried to commit suicide and the claimant had to take care of her granddaughter for whom she has custody and further the claimant testified that she is still disabled and has assistance from a mental healthcare manager. On May 6, 2005, the claimant was seeking paperwork to assist in going on disability. Workforce Development records show no earnings for the claimant since the second quarter of 2005. Accordingly, this matter must be remanded to Claims for an investigation and determination as to whether the claimant is ineligible to receive unemployment insurance benefits because, at relevant times, she is, and was, not able, available, and earnestly and actively seeking work under Iowa Code section 96.4(3).

DECISION:

The representative's decision of April 28, 2006, reference 04, is reversed. The claimant, Ethel L. Ashby, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because she was laid off for a lack of work and she was not discharged for disqualifying misconduct nor did she leave her employment voluntarily without good cause attributable to the employer. In order to determine whether the claimant is otherwise eligible for benefits, this matter must be remanded to Claims for an investigation and determination as to whether the claimant is ineligible to receive unemployment insurance benefits because, at relevant times, she is, and was, not able, available, and earnestly and actively seeking work under Iowa Code section 96.4(3).

REMAND:

This matter is remanded to Claims for an investigation and determination as to whether the claimant is ineligible to receive unemployment insurance benefits because, at relevant times, she is, and was, not able, available, and earnestly and actively seeking work under Iowa Code section 96.4(3).

cs/pjs