

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

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MANPOWER INTERNATIONAL INC
MANPOWER TEMPORARY SERVICE
C/O TALX – UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-03432-SWT
OC: 02/27/05 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, 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)

Iowa Code Section 96.5-1-j – Separation from Temporary Agency

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 25, 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 Ashenfelter participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer from September 3, 2004 to February 25, 2004. She was assigned to work as an assembler at the Eaton Corporation. Eaton Corporation requested that the employer remove the claimant from the assignment due to absenteeism. The claimant had missed one day of work with notice to the employer and was

tardy a couple of times. She had never been warned about her attendance. The employer called the claimant after she returned home from work on February 25, 2004, and informed her that she was being terminated. The person who called did not offer the claimant any other work or advise her to call in later to see if the employer had work for her.

At the time the claimant applied for employment, the employer gave her a statement to read and sign that advised her that she was required to contact the employer within 48 hours after the completion of any work assignment or would be considered to have voluntarily quit employment without good cause.

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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. No excessive unexcused absenteeism has been proven.

Iowa Code Section 96.5-1-j provides that individuals employed by a temporary agency must contact their employer within three working days after the completion of a work assignment and seek a new assignment or they will be considered to have voluntarily quit employment without good cause attributable to the employer, provided that the employer has given them a statement to read and sign that advises them of these requirements.

The claimant understood that she was terminated from her employment with the employer and was not advised to contact the employer after her termination. Furthermore, the statement the employer had the claimant sign is not in compliance with the law since it requires employees to call within 48 hours not three business days as the law requires. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

DECISION:

The unemployment insurance decision dated March 25, 2005, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/kjf