

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

DENNIS T WOLFE
1109 – 33RD ST
BETTENDORF IA 52722

MANPOWER INTERNATIONAL INC
MANPOWER TEMPORARY SERVICES
C/o FRICK UC EXPRESS
P O BOX 66864
ST LOUIS MO 63166-6864

Appeal Number: 04A-UI-03970-S2T
OC: 02/22/04 R: 04
Claimant: Respondent (2)

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 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Manpower (employer) appealed a representative's March 24, 2004 decision (reference 02) that concluded Dennis Wolfe (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 30, 2004. The claimant did not provide a telephone number where he could be reached and, therefore, did not participate. The employer participated by Amy Pankey, On Site Supervisor.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 1, 2002, as a full-time temporary drafter assigned to Mid-American Energy. The claimant's productivity started to decline and the employer investigated. The employer found that the claimant was spending a lot of time sending personal e-mails and playing computer games. On December 12, 2003, the employer issued a verbal warning regarding the claimant's computer use.

The employer continued to monitor the claimant. Between January 19 and 23, 2004, the claimant was spending 56 minutes per drawing. A co-worker was doing five times the work of the claimant. On January 29, 2004, the claimant sent 94 personal e-mails from his work computer. The employer analyzed the information it had compiled and decided to terminate the claimant. The claimant was terminated on February 20, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he was.

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The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer has a right to expect a certain standard of behavior from its employees. They have a right to expect that employees will not be spending work time and using company property to send personal e-mails. The claimant violated the duties and obligations he owed to the employer and in so doing, acted against the best interests of the employer. The administrative law judge concludes that the employer has established that the claimant was discharged for misconduct in connection with employment on February 20, 2004. He is disqualified from receiving unemployment insurance benefits.

The claimant has received benefits in the amount of \$1,610.00 since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's March 24, 2004 decision (reference 02) is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,610.00.

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