

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICKI L GOLLOB

Claimant

APPEAL NO. 11A-UI-07828-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INC OF DM

Employer

OC: 05/08/11

Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Manpower, Inc. of Des Moines filed an appeal from a representative's decision dated June 9, 2011, reference 01, which held that no disqualification would be imposed regarding Nicki Gollob's separation from employment. After due notice was issued, a hearing was held by telephone on July 12, 2011. The employer participated by Bev Reilly, account manager. Ms. Gollob did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Gollob was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Gollob began working through Manpower on January 14, 2011. On March 28, 2011, she began a full-time assignment with Sauer-Danfoss. On May 5, she took boxes to an area where another Manpower employee, Jessica Fears, was working. This task was a normal part of Ms. Gollob's job.

When Ms. Gollob went to the area, Ms. Fears began yelling at her. Ms. Gollob yelled back and the two yelled back and forth for one to two minutes. They both used the words "fuck" and "bitch." There was no physical contact between the two during the exchange. A supervisor went over and broke the two up and Ms. Gollob walked away. Both parties were discharged as a result of the incident. There had been no prior conduct of his nature on Ms. Gollob's part. Sauer-Danfoss had not previously complained about any aspect of her performance or conduct. Because of the incident, she was no longer eligible to receive assignments through Manpower.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321

N.W.2d 6 (Iowa 1982). Ms. Gollob was discharged after a verbal altercation with a coworker. For reasons that follow, it is concluded that her conduct did not rise to the level of disqualifying misconduct. It is unreasonable to expect employees to be docile and well-mannered at all times.

Ms. Gollob was performing her work as normal when Ms. Fears began yelling at her. She used poor judgment in not simply walking away from Ms. Fears. However, errors in judgment are not considered acts of misconduct. See 871 IAC 24.32(1). It is true that both parties used profanity during the argument. They worked in a manufacturing environment. Indecorous language certainly would not be unheard of in such an environment. The administrative law judge has considered the fact that Ms. Gollob had not engaged in similar conduct in the past, the fact that Sauer-Danfoss did not have any prior complaints of any nature about her, and the fact that she was not the person who instigated the argument. It is concluded that the single "hot-headed" incident of May 5 is not sufficient to establish disqualifying misconduct. While the employer may have had good cause to discharge, conduct that might warrant a discharge will not necessarily support a disqualification from benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983)

DECISION:

The representative's decision dated June 9, 2011, reference 01, is hereby affirmed. Ms. Gollob was discharged by Manpower, but misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw