

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM W BROWNING
Claimant

APPEAL NO: 06A-09186-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INC OF CEDAR RAPIDS
Employer

OC: 07/16/06 R: 04
Claimant: Respondent (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer, Manpower, filed an appeal from a decision dated September 5, 2006, reference 03. The decision allowed benefits to the claimant, William Browning. After due notice was issued, a hearing was held by telephone conference call on September 27, 2006. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Risk Control Manager Debra Chamberlin. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

William Browning was employed by Manpower from June 17, 2004 until July 31, 2006. His last assignment was at Alfa Gomma and it ended on July 16, 2006. On July 27, 2006, he was contacted by Manpower about an assignment at Borghi USA, which required a pre-employment drug screening. At the time of hire the claimant received a copy of Manpower's drug and alcohol policy, which informed him he might be required to submit to a drug screening before being assigned to some clients. The policy further states that he would not be eligible for employment with Manpower if there were a positive test.

The claimant gave a urine sample on July 28, 2006, and was later contacted by the medical review officer about a positive test for marijuana. The employer was informed of the test results and sent a certified letter to the claimant's address of record, notifying him of his right to have the split sample retested, the request to be made within seven days of the receipt of the letter. The letter from Manpower also notified him he was terminated

The letter was sent to the claimant's address of record but returned as undeliverable. The letter was sent to other addresses with the same result. It was not until August 29, 2006, the claimant actually received the letter after giving the correct address to the employer at the fact-finding interview in this matter. He did not contact Manpower after receiving the letter.

REASONING AND CONCLUSIONS OF 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.

The claimant was requested to take a drug screen after he had been an employee of Manpower for two years. The administrative law judge considers this to be a random drug screen of an existing employee under the provisions of Iowa Code chapter 730.5, not a pre-employment drug screen. Manpower did not meet the requirements to administer a random drug screen under Iowa law and the test results may not be admitted or considered by the judge. It has failed to meet the burden of proof to establish the claimant was discharged for job-related misconduct.

DECISION:

The representative's decision of September 5, 2006, reference 03, is affirmed. William Browning is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw