

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAISEY L GIBSON
Claimant

APPEAL NO: 07A-UI-02393-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER TEMPORARY SERVICES
Employer

**OC: 01/07/07 R: 01
Claimant: Respondent (5)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Manpower Temporary Services (employer) appealed a representative's February 26, 2007 decision (reference 03) that concluded Daisey L. Gibson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant was not working in the same pattern as she did in her base period for the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 9, 2007. The claimant participated in the hearing. Todd Aschenfelter, a staffing specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant still employed by the employer or was there an employment separation for disqualifying or nondisqualifying reasons in September 2006?

FINDINGS OF FACT:

The employer is a temporary staffing firm. The claimant registered to work for the employer's clients on October 8, 2004. The most recent job the employer assigned the claimant to do was at Eaton.

Prior to September 12, 2006, the employer's representative talked to the claimant about her attendance. On August 7, 2006, the employer told the claimant she was receiving a verbal warning for attendance issues and she needed to improve her attendance.

On September 9, 2006, the claimant left work early because she became ill at work. The claimant told a co-worker she had to go home early. The claimant did not see or know where her supervisor was at on September 9, 2006. The claimant worked as scheduled on September 10 and 11. On September 11, the claimant's supervisor told the claimant to report to work early the next day so the employer's representative could give her a final warning for attendance issues.

The morning of September 12, 2006, the claimant received a message to call the employer's office, which she did. The claimant called and learned she no longer had a job at Eaton. The claimant did not know why she had been released from that job. The employer took the claimant off the job on September 12, 2006, after Eaton asked that the claimant be removed because of continuing attendance issues. The employer did not offer the claimant another job right away, even though the claimant was eligible to be assigned to another job.

The claimant established a claim for unemployment insurance benefits during the week of January 7, 2007. The claimant did not earn ten times her weekly benefits amount between September 12, 2006, and January 7, 2007.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. The facts establish the claimant did not complete a job assignment; instead the employer released or discharged her from the Eaton job assignment on September 12, 2006, because of attendance issues. The claimant did not intentionally fail to work as scheduled. On September 9, 2006, the claimant left work because she became ill at work. The claimant's failure to properly notify management amounts to an error in judgment. The claimant did not substantially disregard the employer's interests when she went home early on September 9 because she told a co-worker she was ill and had to leave work early.

Iowa Code section 96.5-1-j does not apply to this case because the claimant did not complete a job assignment; she was discharged or released from an assignment for absenteeism issues. The purpose of Iowa Code section 96.5-1-j is to put a temporary employment firm on notice that an individual has completed a job assignment so the individual can be assigned another job. In this case, the employer removed or discharged the claimant from the Eaton job assignment.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had business reasons for ending the claimant's job assignment at Eaton, but the facts do not establish that she committed work-connected misconduct. Therefore, the claimant's September 12 employment separation does not disqualify the claimant from receiving unemployment insurance benefits.

The representative's decision that the claimant is still working part-time or on-call is not supported by any evidence presented during the hearing. On September 12, 2006, the employer discharged the claimant from the Eaton job assignment for reasons that do not constitute work-connected misconduct. Based on the reasons for this employment separation, the claimant is qualified to receive unemployment insurance benefits as of January 7, 2007.

DECISION:

The representative's February 26, 2007 decision (reference 03) is modified but the modification has no legal consequence. An employment separation occurred on September 12, 2006, when the employer removed the claimant from a job assignment. The employer discharged or released the claimant from the job assignment on September 12, 2006, for reasons that do not constitute work-connected misconduct. Based on the reasons for this employment separation, the claimant is qualified to receive unemployment insurance benefits as of January 7, 2007. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs