

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

JULIE K HOLDING
921 N FILLMORE AVE
MASON CITY IA 50401

MANPOWER INC OF CEDAR RAPIDS
1220 INDUSTRIAL AVE
HIAWATHA IA 52233-1155

Appeal Number: 05A-UI-08393-AT
OC: 06-19-05 R: 02
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)

Section 96.5-1 – Discharge
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Manpower, Inc. of Cedar Rapids (Manpower) filed an appeal from an unemployment insurance decision dated July 22, 2005, reference 03, which allowed benefits to Julie K. Holding. After due notice was issued, a telephone hearing was held August 30, 2005, with Ms. Holding participating. Risk Control Manager Debra Chamberlain participated for the employer. Exhibit D-1 was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Julie K. Holding was employed as a temporary worker by Manpower from August 3, 2004, until June 10, 2005. She last worked on assignment at Sunny Fresh Foods. On the morning of June 10, 2005, Ms. Holding received a call from her brother telling her that her mother was hospitalized in Spencer. From her brother's description of the situation, Ms. Holding believed that her mother, a diabetic, was dying. She left immediately for Spencer, forgetting to contact either Sunny Fresh Foods or Manpower. As a result of the absence, Sunny Fresh Foods asked that Ms. Holding be replaced on the assignment. Manpower notified Ms. Holding of this on the morning of June 13, 2005. Ms. Holding's prior absences had been prearranged and approved.

The decision from which Manpower has appealed states that it would become final unless an appeal was filed by August 1, 2005. Manpower faxed an appeal to the Unemployment Insurance Appeals Bureau on July 29, 2005. The appeal was misplaced. It was resubmitted on August 16, 2005.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the employer has filed a timely appeal. From the testimony of Ms. Chamberlain and the documentary evidence, the administrative law judge concludes that the employer filed its appeal within the time limit specified by law. The appeal was not docketed through the oversight of the agency. Since the appeal was filed within the time limits specified by statute, the administrative law judge has jurisdiction to rule on the merits of the case.

The next question is whether the separation should be characterized a quit or a discharge. The employer asserts that Ms. Holding quit. However, the employer could produce no written or oral statement indicating that Ms. Holding has expressed a desire to sever the employment relationship. A finding of a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). Ms. Holding denied intending to sever the employment relationship. There is no evidence to the contrary. The administrative law judge concludes that the employer initiated the separation. Thus, it should be characterized as a discharge.

The remaining question is whether the evidence establishes that Ms. Holding was discharged for misconduct in connection with her work. It does not.

The employer has the burden of proof. See Iowa Code section 96.6-2. While excessive unexcused absenteeism constitutes misconduct, a single unexcused absence is not excessive. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989). Assuming without finding that Ms. Holding's absence on June 10, 2005, was unexcused, the record still would establish a single unexcused absence. This is insufficient to justify disqualification for benefits.

DECISION:

The unemployment insurance decision dated July 22, 2005, reference 03, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

kjw/kjw