

**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**

**LORRIE L BIRMINGHAM
426 TAMA ST
BOONE IA 50036**

**HELPING HANDS TEMPORARY
SERVICES INC
27 N CENTER ST
MARSHALLTOWN IA 50158-4912**

**Appeal Number: 05A-UI-00143-CT
OC: 05/09/04 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(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Helping Hands Temporary Services, Inc. filed an appeal from a representative's decision dated December 22, 2004, reference 02, which held that no disqualification would be imposed regarding Lorrie Birmingham's separation from employment. After due notice was issued, a hearing was held by telephone on January 20, 2005. The employer participated by Arlene Wenzel, President. Ms. Birmingham did not respond to the notice of hearing until after the hearing record was closed. Because the failure to participate was due to the failure to read and follow the instructions on the notice of hearing, the administrative law judge declined to reopen the hearing record.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Birmingham was employed by Helping Hands from July 30 until November 18, 2004. On September 26, she began a full-time assignment with Barilla America. Ms. Birmingham pinched her finger on November 17 when she reached into a machine to clear a jam without first shutting it off. When she was observed engaging in the same conduct on November 18, the client company requested her removal from the assignment. Helping Hands did not place Ms. Birmingham in a new assignment.

Ms. Birmingham last claimed job insurance benefits the week ending December 11, 2004. She notified Helping Hands on December 13, 2004 that she had found permanent employment.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Birmingham was separated from employment for any disqualifying reason. 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. Birmingham was discharged from her temporary work assignment because she was not working safely. She did, in fact, commit two unsafe acts. The administrative law judge does not believe she deliberately and intentionally placed herself in harm's way. However, her actions did constitute negligence.

Negligence does not constitute disqualifying misconduct unless it is sufficiently recurrent as to manifest a substantial disregard of the employer's interests or standards. Ms. Birmingham's negligence was not so wanton or recurrent as to constitute willful misconduct. Although there may have been good cause to discharge her, her conduct did not rise to the level of misconduct sufficient to result in disqualification from benefits. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated December 22, 2004, reference 02, is hereby affirmed. Ms. Birmingham was discharged, but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/sc