

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARIAN BANKS
Claimant

APPEAL NO. 10A-UI-05905-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MANPOWER INTERNATIONAL INC
MANPOWER TEMPORARY SERVICES**
Employer

**Original Claim: 02/21/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated April 7, 2010, reference 04, that held he was discharged for excessive unexcused absenteeism on February 21, 2010, and that denied benefits. A hearing was held on June 10, 2010. The claimant participated. Crystal Alexander, Staffing Specialist, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds that: The claimant worked an assignment at Medco as a full-time un-loader from August 12, 2009 to January 22, 2010. Medco has an attendance policy that awards one point for an absence and one-half point for a tardy or leaving early. An employee may be terminated for accumulating five points.

The employer notified the claimant he was terminated on January 22, 2010, for having incurred five and one-half points. The claimant never received any written warning that he was near the five-point threshold for termination. The claimant questioned whether he was absent on January 15 and/or late to work on January 20.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on January 22, 2010, for excessive "unexcused" absenteeism.

The employer could not offer any business record of absences/tardiness or warning to the claimant that his job was in jeopardy. The claimant had no reasonable belief he was near the five-point threshold for discharge due to attendance issues, and the employer failed to provide documentation to establish any recent violations. Job-disqualifying misconduct is not established in this matter.

DECISION:

The decision of the representative dated April 7, 2010, reference 04, is reversed. The claimant was not discharged for misconduct in connection with employment on January 22, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw