

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICKY A JONES

Claimant

APPEAL NO. 08A-UI-09608-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER TEMPORARY SERVICES

Employer

**OC: 07/06/08 R: 01
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Manpower Temporary Services filed an appeal from a representative's decision dated October 8, 2008, reference 02, which held that no disqualification would be imposed regarding Ricky Jones' separation from employment. After due notice was issued, a hearing was held by telephone on November 4, 2008. The employer participated by Todd Ashenfelter, Staffing Specialist. Mr. Jones did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Jones was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Jones was last employed by Manpower from April 30 until May 30, 2008. He was assigned to work through Kelly Services for Kawasaki. He was removed from the assignment because of his attendance.

Mr. Jones was required to contact both Kelly Services and Manpower if he was going to be absent from work. He did not call either party to report his absence of May 2. He was sent home early by his supervisor on May 15 but did not notify either Kelly Services or Manpower. On May 29, Mr. Jones reported his absence to Kelly Services but did not contact Manpower. He was also absent on May 9 but properly reported the absence. On May 30, he was notified of his removal from the assignment but was not offered other work. Mr. Jones had not been advised in writing that he had to seek reassignment within three working days of the end of an assignment.

REASONING AND CONCLUSIONS OF LAW:

Mr. Jones was released from his last assignment through Manpower but was not offered other work. The administrative law judge concludes, therefore, that he was discharged effective May 30, 2008 as his separation at that point was at the employer's initiative. 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). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

Mr. Jones missed four days of work during his assignment with Kawasaki. He gave no notice of his intent to be absent on May 2 and, therefore, the absence is unexcused. He did not notify either Kelly Services or Manpower that he was sent home early on May 15. Although Mr. Jones knew he had to report absences, the administrative law judge does not believe the reasonable person would understand this to mean he also had to report that a supervisor had sent him home early. For this reason, the failure to report that he was sent home was not an act of misconduct.

It is true that Mr. Jones did not notify both Kelly Services and Manpower that he would be absent on May 29. He did contact Kelly Services to report the intended absence. Inasmuch as there was substantial compliance with the reporting requirements, the failure to also contact Manpower was not an act of misconduct. The evidence of record establishes only the one incident of misconduct on May 2. However, this was not a current act in relation to the May 30 discharge. As such, it cannot form the basis of a misconduct disqualification. See 871 IAC 24.32(8).

After considering all of the evidence, the administrative law judge concludes that the employer has failed to establish that Mr. Jones deliberately and intentionally acted in a manner he knew to be contrary to the employer's standards and interests. The evidence failed to establish substantial misconduct. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated October 8, 2008, reference 02, is hereby affirmed. Mr. Jones was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css