

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA S KIER**

Claimant

**APPEAL NO. 07A-UI-09685-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANPOWER INTERNATIONAL INC**

Employer

**OC: 09/09/07 R: 01  
Claimant: Respondent (2)**

Section 96.5(2) – Discharge  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, Manpower, filed an appeal from a decision dated October 2, 2007, reference 01. The decision allowed benefits to the claimant, Patricia Kier. After due notice was issued, a hearing was held by telephone conference call on October 30, 2007. The claimant participated on her own behalf. The employer participated by Staffing Specialist Todd Ashenfelter.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Patricia Kier was employed by Manpower from May 24, 1999 until September 11, 2007. Her last assignment began on September 6, 2005, at NSK.

On several occasions, the Manpower on-site supervisor at NSK, Heidi Pringle, had talked with the claimant about the need to properly report her absences. Policy requires the workers to call both Manpower and NSK prior to the start of the shift if they are unable to report for work. The final warning was given on September 7, 2007, and at that time Ms. Pringle told her that her job could be in jeopardy if there were any further incidents of improper reporting.

On September 11, 2007, the claimant was no-call/no-show to work. Her husband called for her around 11:00 a.m. to say neither of them would be in to work that day, as a family member was ill. Staffing Specialist Todd Ashenfelter called the claimant and told her she was removed from the assignment at the request of the client because of her attendance and failure to properly notify the employer of her absence.

Patricia Kier has received unemployment benefits since filing a claim with an effective date of September 9, 2007.

## 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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

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 claimant had been advised her job was in jeopardy as a result of her attendance and failure to properly notify both the employer and the client. In spite of the warnings, four days after the supervisor told her that her job was in jeopardy, the claimant did not call in until four hours after the scheduled start of her shift. While it is understandable she may have been somewhat anxious about the family medical situation, it does not excuse her from the requirement to properly notify Manpower and NSK of her absence. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of October 2, 2007, reference 01, is reversed. Patricia Kier is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,869.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw