

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIANELA C TELLEZ
Claimant

APPEAL NO. 08A-UI-10360-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MANPOWER INTERNATIONAL INC
MANPOWER TEMPORARY SERVICES**
Employer

**OC: 09/14/08 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Marianela C. Tellez (claimant) appealed a representative's October 27, 2008 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Manpower International, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 20, 2008. This appeal was consolidated for hearing with one related appeal, 08A-UI-10361-DT. The claimant participated in the hearing. Dave Dickey appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began taking assignments with the employer on June 12, 2007. Her final assignment began on August 13, 2008. She worked full time as a parts painter at the employer's Williamsburg, Iowa, business client. Her normal schedule was to work 4:00 p.m. to 12:00 a.m., Monday through Friday, plus weekend overtime as needed. Her last day on the assignment was September 16, 2008. The assignment ended because the business client and the employer concluded she had quit by walking off of the job.

The claimant reported for her scheduled work at 4:00 p.m. on September 16. During the start-up meeting, the line lead instructed the team that bathroom and water breaks were to be kept to designated break times. On September 15, the claimant had informed the business client that she had recently been prescribed medication that had a side effect of causing her to need to use the restroom more frequently.

At approximately 4:40 p.m. on September 16, the claimant had a need to use the restroom and approached the line lead for permission. He reminded her of the meeting they had just had and denied her request to use the restroom, telling her she needed to wait until break time, which was

not until about 5:30 p.m. About five minutes later the claimant reapproached the line lead and reiterated her request, saying she really needed to go, but he again refused to grant her permission, so the claimant returned to the line. At about 5:10 the claimant became desperate and left the line, trying to get to the restroom regardless of not having permission. She was not in time and soiled herself by the time she reached the restroom.

The claimant waited in the restroom for a short while debating what to do, but concluded she was too embarrassed to go back out onto the floor, so decided she needed to go home. She was also beginning to have an anxiety or panic attack, the condition for which she had recently been prescribed medication. She was further too embarrassed to go back to speak to the line lead or to go and seek out other management to explain why she was leaving, so she just left out a back door and went home. Upon arriving home, she did not call the business client or the employer to advise what had happened, because she did not have a phone and was feeling too ill from the panic attack to go out and find a phone, so she retired to bed.

The next morning, the claimant got to a phone and exchanged a number of phone calls with the employer, but was ultimately informed that she could not return to the assignment because the employer and the business client deemed her to have quit by walking out without permission.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that she quit by walking out without permission or notification. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a

willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was leaving the business client prior to the end of her shift without notification or permission. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant had been given permission to use the restroom and did not have a good reason for leaving when and how she had. The claimant's testimony was first-hand, in contrast with the employer's provision of, at best, third-hand information regarding the events in the client's facility. Under the circumstances of this case, the claimant's leaving without proper notification or permission was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good-faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's October 27, 2008 decision (reference 03) is reversed. The claimant did not voluntarily quit; the employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw