

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

KATHY J ARMSTRONG  
628 - 18<sup>TH</sup> AVE  
FULTON IL 61252

MANPOWER INTERNATIONAL INC  
MANPOWER TEMPORARY SERVICES  
C/O FRICK UC EXPRESS  
PO BOX 66864  
ST LOUIS MO 63166-6864

Appeal Number: 05A-UI-03331-JTT  
OC: 02/13/05 R: 04  
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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Manpower filed a timely appeal from the March 23, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 19, 2005. Kathy Armstrong participated in the hearing. Sally Jacobs, Staffing Specialist, represented Manpower.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kathy Armstrong was employed through Manpower Temporary Services as a full-time production worker from November 10, 2003 until February 20, 2004, when Kimberly McCollum of Manpower advised her that she was being discharged from her assignment. Ms. Armstrong's one and only assignment through Manpower had been at Plastipaint, where she had buffed tractor parts. During the assignment, Ms. Armstrong worked 15-16 hours of overtime per week. Ms. Armstrong had difficulty seeing the buff marks. Ms. Armstrong had requested to perform other work at the plant and was sometimes put to work on an "all steel" production line in order to give her eyes a rest.

Ms. Armstrong was willing to continue in the assignment if there was no other work available for her at the Plastipaint plant. Plastipaint management had indicated to Ms. Armstrong, and possibly to Manpower, that it was not satisfied with the quality of Ms. Armstrong's work.

On February 20, 2004, Kimberly McCollum contacted Ms. Armstrong and advised her that the assignment at the Plastipaint plant would end that day. Manpower's records indicate that Ms. Armstrong advised the Manpower staff that she did not want to do the buffing work. Those records do not reflect any statement on the part of Ms. Armstrong that she would not perform the buffing work. Ms. Armstrong had no additional contact with Manpower until March 11, 2004, when she contacted the agency to inquire about a new assignment.

Ms. Armstrong executed an agreement with Manpower whereby she was to notify the employment agency by telephone within 48 hours of the end of an assignment.

#### REASONING AND CONCLUSIONS OF LAW:

In reaching a decision in this matter, the administrative law judge is guided by the public policy statement of the Iowa Legislature set forth at Iowa Code section 96.2. Courts are to construe the provisions of the unemployment compensation law liberally, and to interpret the unemployment compensation law's disqualification provisions strictly, to further the purpose of the law. See Bridgestone/Firestone, Inc. v. Employment Appeal Bd., 570 N.W.2d 85 (Iowa 1997)

The first question for the administrative law judge is whether the evidence in the record indicates that Ms. Armstrong quit the position or was discharged.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). Though the evidence presented by both parties indicates Ms. Armstrong was unhappy performing the buffing work, the evidence does not establish that Ms. Armstrong intended to quit the employment. Ms. Armstrong testified she did not intend to quit, but understood the client employer was not happy with her work. Manpower's witness testified from the employer's records and had no firsthand knowledge or involvement in Ms. Armstrong's separation from the employment. The administrative law judge concludes that the weight of the evidence establishes that Ms. Armstrong did not quit the employment, but was discharged from the assignment by Manpower and/or Plastipaint.

Given that Ms. Armstrong was discharged from the assignment, the sole remaining question is whether the evidence in the record establishes that she was discharged for misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). Before the administrative law judge can find that an employee was discharged for misconduct, the evidence in the record must establish the existence of a "current act" of misconduct. See 871 IAC 24.32(8).

The evidence indicates it was not misconduct, but poor quality work, that prompted Ms. Armstrong's discharge from the assignment. Neither party provided evidence to suggest that Ms. Armstrong's poor performance was attributable to intentional behavior or recurrent negligence on her part. Instead, it appears that Ms. Armstrong lacked the skill and/or or the eyesight to perform her assigned duties to Plastipaint's satisfaction. The administrative law judge concludes Ms. Armstrong was discharged for no disqualifying reason and benefits are allowed, provided Ms. Armstrong is otherwise eligible.

DECISION:

The Agency representative's decision dated March 23, 2005, reference 01, is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

jt/sc