

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK TWEEDY**  
Claimant

**APPEAL NO. 08A-UI-01511-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANPOWER INTERNATIONAL INC  
MANPOWER TEMPORARY SERVICES**  
Employer

**OC: 12/23/07 R: 04  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Mark Tweedy (claimant) appealed a representative's February 6, 2008 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Manpower Temporary Services (employer) for dishonesty in connection with his work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 27, 2008. The claimant participated personally. The employer participated by Tammi Ames, On Site Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on September 20, 2007, as a full-time temporary billing posting clerk assigned to work at MidAmerican Energy. The claimant was a good worker, but on December 20, 2007, his supervisor at MidAmerican Energy could not find him when the supervisor checked off and on for about four hours. The supervisor and the employer discussed the matter and waited to see if the claimant turned in a time sheet indicating he had actually worked the ten hour shift that he was supposed to work. On December 24, 2007, the claimant indicated on his time card that he worked ten hours on December 20, 2007. The supervisor met with the claimant and told him that they were overstaffed and had to terminate him. The employer talked to the claimant about the situation. The employer thought the claimant said he did not work a complete ten hours on December 20, 2007. The claimant denies taking more time off than the 30-minute lunch he was allotted. He was away from his desk copying, faxing, and conferencing as the job demanded.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present eyewitness testimony but did not. The employer did not provide firsthand testimony at the hearing and, therefore, did not provide sufficient eyewitness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's February 6, 2008 decision (reference 02) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw