

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT A SHATTUCK**

Claimant

**APPEAL NO. 15A-UI-02371-S2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANPOWER INC OF DES MOINES**

Employer

**OC: 02/01/15**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Robert Shattuck (claimant) appealed a representative's February 16, 2015 (reference 01) decision that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Manpower Inc. of Des Moines (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for March 25, 2015, in Des Moines, Iowa. The claimant participated personally. The employer participated by Jenna Scott, Staffing Specialist.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary agency. The claimant was hired on May 28, 2013 as a full-time yard worker assigned to work at Mobile Mini. The claimant signed for receipt of the employer's handbook at the time he was hired. The claimant was supposed to notify the employer of all absences. The claimant did not appear for work or notify the employer of his absence on May 9, 2014. He was tardy for work on October 13, 14, 15, and 23, 2014. On October 23, 2014, the employer issued the claimant a warning about his attendance and his duty to report his absenteeism to the employer. The employer notified the claimant that further infractions could result in termination from employment. The claimant did not appear for work or report his absence due to illness to the employer on January 14, 2015. On January 16, 2015, the employer issued the claimant a warning about his attendance and his duty to report his absenteeism to the employer. The employer notified the claimant that further infractions could result in termination from employment.

The claimant did not appear for work or notify the employer of his absence on January 29 and 30, 2015. The client ended his assignment. The employer terminated the claimant on February 2, 2015. At the hearing the claimant said he had the flu on January 29 and 30, 2015 but did not report this to the employer until the appeal hearing.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(1)a, (8) provide:

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 Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was an improperly reported illness which occurred at the end of January 2015. The claimant's absence does amount to job misconduct because it was not properly reported. The claimant was discharged for misconduct. He is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's February 16, 2015 (reference 01) decision is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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