

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALFRED O HERRERA**  
Claimant

**APPEAL NO. 08A-UI-02495-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LABOR READY MIDWEST INC**  
Employer

**OC: 01/20/08 R: 01**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Labor Ready Midwest, Inc. filed an appeal from a representative's decision dated March 3, 2008, reference 02, which held that no disqualification would be imposed regarding Alfred Herrera's separation from employment. After due notice was issued, a hearing was held by telephone on March 27, 2008. The employer participated by Suzette Harms and Deanna Newton, Customer Service Representatives. Mr. Herrera did not respond to the notice of hearing.

**ISSUE:**

At issue in this matter is whether Mr. Herrera was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Herrera began working through Labor Ready Midwest, Inc., a temporary placement firm, in October of 1997. On the morning of February 28, 2008, he accepted a one-day assignment with Schrader Service, which was to begin at noon that same day. Other temporary workers were being sent to the same assignment and Mr. Herrera demanded that he be allowed to transport them all so that he could receive gas money. He was told that the number of drivers would depend on the number of workers going to the site and who was available to drive. Mr. Herrera became involved in an argument with Deanna Newton as to whether he had been promised he could transport all of the workers. The argument took place in the lobby and there were no other workers there at the time. After the argument, Mr. Herrera was allowed to proceed to the assignment with Schrader Service.

After completing the one-day assignment with Schrader Service, Mr. Herrera returned to the Labor Ready office to receive his pay. He spoke to the manager and again raised the issue of being allowed to transport all of the workers. He told the manager he had been promised he could take all of the workers and that he should get all the gas money for doing so. The two argued as to whether any such promise had been made. Because of his refusal to drop the

subject, the decision was made that Labor Ready would not send Mr. Herrera on any further assignments.

**REASONING AND CONCLUSIONS OF LAW:**

Mr. Herrera was discharged when Labor Ready decided not to send him on assignments after February 28, 2008. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Herrera was discharged as a result of arguments he had with two Labor Ready staff members on February 28. He did not use profanity or other inappropriate language during either exchange. He did not engage in any threatening behavior during either exchange. Moreover, he was allowed to go on an assignment in spite of his argument with Ms. Newton the morning of February 28.

It is unreasonable to expect employees to be docile and well-mannered at all times. Mr. Herrera had what he apparently felt was a legitimate dispute as to what he had been told regarding transporting other workers. He was within his rights to address the disputed issues with those in charge. Since he was not using profanity or acting in a threatening manner, the administrative law judge is inclined to view his conduct as a minor peccadillo and not an act of deliberate misconduct. While the employer may have had good cause to discharge Mr. Herrera, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

**DECISION:**

The representative's decision dated March 3, 2008, reference 02, is hereby affirmed. Mr. Herrera was discharged, but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw