

**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**

**TODD C ZAEHRINGER  
1901 BREESE S5  
MUSCATINE IA 52761**

**MANPOWER INTERNATIONAL INC  
c/o TALX UCM SERVICES  
PO BOX 66864  
ST LOUIS MO 63166-6864**

**Appeal Number: 05A-UI-01296-HT  
OC: 01/02/05 R: 04  
Claimant: Respondent (2)**

**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, 4<sup>th</sup> 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  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Manpower, filed an appeal from a decision dated January 24, 2005, reference 01. The decision allowed benefits to the claimant, Todd Zaehring. After due notice was issued a hearing was held by telephone conference call on February 22, 2005. The claimant provided a telephone number of (563)264-1543. That number was dialed at 11:00 a.m. and 11:03 a.m. and allowed to ring ten times on each occasion. No one answered and the claimant did not participate. The employer participated by Staffing Specialist Jessica Phillips.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Todd Zaehring was employed by Manpower from April 27 until October 28, 2004. He was assigned to PetroChem during that time. At the time of hire he received a copy of the employee handbook, which notifies employees on the proper procedure for reporting any absences. The employee is to contact the company where he or she is assigned, and also Manpower.

Mr. Zaehring missed nine days of work, left early on two occasions and was tardy twice. The claimant did not notify anyone at Manpower of any of these absences and the supervisor at PetroChem, Tony, did not report the absences to the employer, either. On October 25, 2004, Tony did call Manpower and said the claimant had been verbally warned that day for absenteeism and had received a verbal warning. He was going to be given another chance but it was likely he would be asked to leave if he missed any more work.

On October 28, 2005, the claimant again was absent without notifying Manpower, and Tony called Staffing Specialist Jessica Phillips to request Mr. Zaehring be removed from the assignment. She called him and notified him he was not to return to PetroChem.

Todd Zaehring has received unemployment benefits since filing a claim with an effective date of January 2, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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, (7) 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant was discharged for excessive absenteeism after being warned. His final absence, which occurred only three days after the final warning, may have been due to illness but was not properly reported. He did not notify Manpower as required. Under the provisions of Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982), only absences due to illness which are properly reported are considered excused and not misconduct. The claimant was discharged for excessive, unexcused absenteeism, which is misconduct under the provisions of the above Administrative Code section, and the claimant is disqualified.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 24, 2005, reference 01, is reversed. Todd Zaehring is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$1,098.00.

bgh/kjf