

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

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CLINTON IA 52732

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

Appeal Number: 05A-UI-00209-H2T  
OC: 12-05-04 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/Misconduct  
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 23, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 21, 2005. The claimant did participate. The employer did participate through Sally Jacobs, Staffing Specialist.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a general laborer at Pallet Recovery full time beginning June 9, 2004 through November 26, 2004 when he was discharged. The claimant was discharged from employment due to a final incident of absenteeism on November 26, 2004, when he called to

report that she would not be able to work that day because his children were ill and needed to be taken to the doctor. The claimant has no family or friends who are able to care for his sick children, nor was the child's Mother available to provide care. The claimant is the only person in his family who can drive so he needed to be the one to take the children to the doctor.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(7) provides:

(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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Absences related to lack of childcare are generally held to be unexcused. Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). However, a good faith inability to obtain childcare for a sick infant may be excused. McCourtney v. Imprimis Technology, Inc., 465 N.W.2d 721 (Minn. App. 1991).

Because the final absence was related to the properly reported illness of a small child, for which no childcare was available, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

#### DECISION:

The December 23, 2004, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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