

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

JAMES D WAGNER
1611 HICKSON AVE
DUBUQUE IA 53001-5456

MCCANN'S SERVICE INC
c/o ROGER KLOSTERMAN PC
3255 FOOTHILL CT
DUBUQUE IA 52001

Appeal Number: 06A-UI-02652-CT
OC: 01/29/06 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4(3) – Able and Available
Section 96.7(2)a – Relief of Charges

STATEMENT OF THE CASE:

McCann's Service, Inc. filed an appeal from a representative's decision dated February 23, 2006, reference 02, which held that no disqualification would be imposed regarding James Wagner's separation from employment. After due notice was issued, a hearing was held by telephone on March 27, 2006. Mr. Wagner participated personally. The employer participated by Bruce McCann, President.

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. Wagner began working for McCann's Service, Inc. in December of 2003. He was initially hired to work as a clerk in the employer's convenience store. Approximately six months before his separation, he was moved to the employer's U-Haul rental business because of customer complaints. As of January 24, 2006, the employer decided to remove him from the position because of customer complaints. The employer felt Mr. Wagner was too rigid in his adherence to company policies. The employer believed it was not what he said to customers but the manner in which he said it that made him appear rude and arrogant.

On January 24, Mr. McCann told Mr. Wagner to take two to three days off to see if he was willing to return to the U-Haul business and deal with customers in the manner desired by the employer. He was to let the employer know his intentions. In the meantime, the only work that would be available to him was as a transport driver. Work as a transport driver was sporadic work. When Mr. Wagner went to get his check on January 27, he spoke to Mr. McCann's wife about work and indicated a desire to return to the U-Haul position. In early February, he asked Mr. McCann if he could return to his job with U-Haul and was told he could not. The employer's decision was based on the fact that Mr. Wagner did not express a willingness to work better with customers. Mr. Wagner remained available to work the same hours for the employer as he had previously worked.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Wagner satisfies the availability requirements of the law. He has remained available to work full time for McCann's Service, Inc. at all times since filing his claim effective January 29, 2006. It was the employer's decision not to provide him with work other than sporadic work as a transport driver. Mr. Wagner was never warned before January 24 that he was in danger of losing his job or being demoted. The employer had addressed the problem of customer complaints with him and he attempted to conform to the employer's expectations. To the extent that Mr. Wagner's removal from U-Haul duties was disciplinary action, it was not for misconduct within the meaning of the law.

Mr. Wagner notified the employer early in February that he wanted to resume work with U-Haul. The employer did not return him to the job because he did not expressly say he would deal with customers differently. He did not say that he would not treat them differently. It was the employer's decision that he would not be allowed to return to the employment in spite of the fact that he was available for work.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Mr. Wagner satisfied the availability requirements of the law. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated February 23, 2006, reference 02, is hereby affirmed. Mr. Wagner satisfied the availability requirements of the law effective January 29, 2006. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/tjc