

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CINDY L HAMM
Claimant

APPEAL NO. 09A-UI-07811-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**“MANPOWER INTERNATIONAL INC
“MANPOWER TEMPORARY SERVICES**
Employer

**OC: 10/05/08
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Cindy Hamm filed an appeal from a representative's decision dated April 1, 2009, reference 01, which denied benefits based upon her separation from Manpower International. After due notice a hearing was scheduled for and held on June 15, 2009. The claimant participated personally. Although duly notified the employer did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: The claimant was employed by Manpower International from May 27, 2007 until June 24, 2008 as a production worker assigned to work at the NSK Company. The claimant was separated on June 24, 2008 when she was unable to continue to perform her duties due to a work-related injury. The claimant had fallen at work and subsequently developed problems in the manipulation of her arms and hands. The claimant kept Manpower International advised of her medical condition and status and subsequently attempted to return to work after being fully released following back surgery. No work was available to the claimant upon being fully released.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes misconduct sufficient to warrant a denial of unemployment insurance benefits. It does not.

The evidence in the record establishes that the claimant was unable to work due to what the claimant reasonably considered to be a work-related injury. The claimant was separated on June 24, 2008 due to the necessity that she have surgery because the claimant was losing the manipulation of her arms and hands due to the previous injury. When fully released the

claimant attempted to return to work with Manpower International, however, Manpower International would not allow the claimant to return although they were aware of the circumstances and the fact that she had been fully released to return.

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 provides:

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.

871 IAC 24.26(6)a provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The claimant reasonably believes that her injury was work related and maintains that she did not choose to voluntarily leave employment. The administrative law judge concludes based

upon the evidence in the record that in the alternative if the employer believed that the injury was not work related, the evidence in the record nevertheless shows that upon recovery the claimant returned and offered to perform services to the employer but no work was available. The administrative law judge thus concludes that the claimant's separation from employment was non disqualifying. Although given the opportunity to participate personally and provide sworn testimony, the employer elected not to participate in the hearing of this matter.

The claimant's appeal was filed beyond the ten-day statutory limit as her initial appeal filed was timely but was not properly faxed by claimant's area representative on behalf of the claimant. Good cause for late filing has been shown.

DECISION:

The representative's decision dated April 1, 2009, reference 01, is reversed. The claimant was separated for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs