

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

SINGLETON R NICHOLS  
PO BOX 182  
WELCH AVE STATION  
AMES IA 50014

MANPOWER INC OF DM  
517 – 5<sup>TH</sup> AVE  
DES MOINES IA 503099

MANPOWER OF DES MOINES  
C/O TALX UCM SERVICES  
P O BOX 66864  
ST LOUIS MO 63166-6864

**AMENDED**

Appeal Number: 05A-UI-07266-HT  
OC: 06/19/05 R: 02  
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 June 29, 2005, reference 01. The decision allowed benefits to the claimant, Singleton Nichols. After due notice was issued, a hearing was held by telephone conference call on August 2, 2005. The claimant provided a telephone number of (515) 292-9085. That number was dialed at 11:01 a.m. and 11:03 a.m. and allowed to ring at least ten times on each occasion. The claimant did not answer and did not participate in the hearing. The employer participated by On-Site Recruiter Bev Reilly.

#### 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: Singleton Nichols was employed by Manpower for one day, May 10, 2005. He was assigned for an indefinite period of time at Saur Danfoss. At the time he applied for employment, Manpower On-Site Recruiter Bev Reilly notified him he would have to pass the pre-employment drug test and background check. In addition, he signed the paperwork acknowledging he was subject to the background check and drug test. He also acknowledged he could be discharged if he began employment but the drug test or background check came back with positive results.

On May 10, 2005, Mr. Nichols was to start working the third shift. Ms. Reilly told him the background check from Detroit had not yet been received and asked him if he knew of anything that would affect his employment in that report. He said there was not. The next day Ms. Reilly received an urgent e-mail from the company which does the background checks. There was an outstanding warrant for the claimant in Detroit on a charge of carrying a concealed weapon.

Ms. Reilly contact the claimant and notified him of the report. He did not admit or deny the charge and only responded "okay" when the employer informed him his assignment was at an end.

Singleton Nichols has received unemployment benefits since filing a claim with an effective date of June 19, 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 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.

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).

The claimant had been advised that his employment was contingent on a "clean" background check. He did not admit to the employer that the Detroit background check could present problems even when asked directly.

The employer must have as a priority the safety of its clients and the clients' employees. Mr. Nichols' criminal background presented serious concerns as to whether Manpower could assure its clients it was providing appropriate workers, given the nature of the claimant's criminal charges of concealed weapons. Employers need to be concerned about workplace violence and the claimant's failure to acknowledge the charges against him prevented Manpower from doing further investigation on the matter before assigning the claimant. This is conduct not in the best interests of the employer 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 June 29, 2005, reference 01, is reversed. Singleton Nichols 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 \$690.00.

bgh/kjw/pjs