

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDI L TATE

Claimant

APPEAL NO. 07A-UI-06073-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INTERNATIONAL INC

Employer

**OC: 05/20/07 R: 12
Claimant: Respondent (1-R)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 8, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 3, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Todd Ashenfelter participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

Did the claimant voluntarily quit employment without good cause attributable to the employer?
Was the claimant able to and available for work?

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant was informed and understood that under the employer's work rules, she was required to contact the employer within 48 hours after the completion of the job assignment and weekly afterward to maintain her availability for future assignments.

The claimant worked for the employer from May 26, 2006, to January 22, 2007, on an assignment at Eaton Corporation. The assignment was ended by the employer due to the client's belief that the claimant lacked the ability to perform the job. A staffing specialist contacted the claimant on January 22 and informed her that she was being removed from the assignment. The employer did not have any available assignments at that time. The claimant did not contact the employer after being removed from the assignment at Eaton Corporation.

A staffing specialist contacted the claimant on February 16, 2007. She offered the claimant a position at NSK Company in Clarinda, Iowa. The claimant declined the offer because she was attending school in St. Joseph, Missouri. She did not have a valid claim for unemployment insurance benefits in effect at the time that she declined the offer of work.

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 20, 2007. As of the date that the claimant filed for unemployment benefits, she was not attending school and was available for work and actively seeking work.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

The claimant was removed from the assignment at Eaton Corporation due to inability to perform the job, which does not meet the standard of work-connected misconduct as defined in the unemployment insurance rules. The rules limit disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. 871 IAC 24.32(1).

Iowa Code section 96.5-1-j provides that individuals employed by a temporary agency must contact their employer within three working days after the completion of a work assignment and seek a new assignment or they will be considered to have voluntarily quit employment without good cause attributable to the employer, provided that the employer has given them a statement to read and sign that advises them of these requirements. The claimant is not subject to disqualification under this section of the law, because the employer's requirement that employees contact the employer within 48 hours after completing a job assignment is not in compliance with the statute. The law does not impose a disqualification on individuals who fail to keep in weekly contact with a temporary agency after an assignment ends. In addition, the claimant did have contact with the employer when the staffing specialist informed her that she was being removed from the assignment. At that point, the employer did not have any further work for the claimant and she would be considered to have been unemployed due to lack of work.

Although the employer offered the claimant a job on February 16, 2007, the claimant cannot be disqualified for failing to accept the offer, because the claimant did not have a claim for unemployment insurance in effect at that time. The unemployment insurance rules provide that a claimant is only subject to disqualification if the offer of work and refusal of work are made after the effective date of a valid claim for unemployment insurance benefits. 871 IAC 24.24(8).

The final issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The evidence establishes that the claimant was able to and available for work and actively seeking work effective May 20, 2007.

During the hearing, the employer presented information regarding an offer of work made on June 7, 2007. The parties were given the choice of having the issue of whether the claimant failed to accept an offer of suitable work without good cause on June 7 determined by the appeal hearing or by remand to the agency for a fact-finding interview. The employer chose to have the matter remanded to the agency for a fact-finding interview.

DECISION:

The unemployment insurance decision dated June 8, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The issue of whether the claimant failed to accept an offer of suitable work without good cause on June 7, 2007, is remanded to the agency for a fact-finding interview and determination.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw