

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

JULIAN S BUJANOWSKI  
103 MARKET LOT #2  
MT PLEASANT IA 52641

ADECCO USA INC  
c/o TALK UC EXPRESS  
PO BOX 66736  
ST LOUIS MO 63166-6736

Appeal Number: 05A-UI-00661-CT  
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, 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 for Misconduct

STATEMENT OF THE CASE:

Adecco USA, Inc. (Adecco) filed an appeal from a representative's decision dated January 7, 2005, reference 03, which held that no disqualification would be imposed regarding Julian Bujanowski's separation from employment. After due notice was issued, a hearing was held by telephone on February 2, 2005. Mr. Bujanowski participated personally and offered additional testimony from Nancy Bujanowski. The employer participated by Chrissy Ball, Office Supervisor, and was represented by Tracy Taylor of TALX UC eXpress. The hearing record was left open for the submission of telephone records from Mr. Bujanowski. The records were not available and, therefore, the hearing record was closed on February 10, 2005. Exhibits One through Seven were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Bujanowski was employed by Adecco from December 12, 2003 until December 4, 2004. He was at all times assigned to work full time for Celestica. He was released from the assignment due to his attendance.

Prior to December of 2004, all of Mr. Bujanowski's absences had been due to his own illness, that of his wife, or that of a child. All of the absences had been properly reported. Mr. Bujanowski was scheduled to be at work at 6:00 a.m. on December 4, 2004 but did not arrive until approximately 7:30 a.m. He was late because he overslept. The employer has no record of him or anyone acting on his behalf contacting the employer to report the tardiness. This was the only occasion on which Mr. Bujanowski had been late to work. He had received a verbal warning about his attendance on November 12, 2004. Attendance was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Bujanowski was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if he was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences.

All of the absences prior to December of 2004 are considered excused as they were for reasonable cause and were properly reported. The employer's evidence did not establish any absences that were not for medical reasons. It was not unreasonable for Mr. Bujanowski to remain home to care for his ill wife or to miss work when his child was hospitalized. The only period of unexcused absenteeism was Mr. Bujanowski's tardiness of December 4, 2004. The parties dispute whether he or his wife called to report the intended tardiness. There is also a question as to whether the oversleeping was, in fact, due to the effect of medication. However, even if the administrative law judge were to find that the tardiness was not reported and was not for reasonable cause, it would still represent only one period of unexcused absenteeism. The administrative law judge is not bound by an employer's designation of an absence as unexcused.

Mr. Bujanowski was on his assignment with Celestica for one year and had only one unexcused absence. The administrative law judge does not consider this excessive. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, it is concluded that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated January 7, 2005, reference 03, is hereby affirmed. Mr. Bujanowski was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs