

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT S MARTINEZ
Claimant

APPEAL NO. 09A-UI-01919-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MANPOWER INTERNATIONAL INC
MANPOWER TEMPORARY SERVICES**
Employer

**OC: 11/30/08 R: 04
Claimant: Respondent (2/R)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Manpower Temporary Services filed a timely appeal from an unemployment insurance decision dated January 30, 2009, reference 05, that allowed benefits to Robert S. Martinez. After due notice was issued, a telephone hearing was held February 27, 2009 with Account Manager Leo Patrick participating for the employer. Mr. Martinez did not provide a telephone number at which he could be contacted.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

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: Robert S. Martinez was employed by Manpower Temporary Services from May 2, 2008 until he was discharged November 3, 2008. He last worked on assignment at Wilton Precision Steel.

Mr. Martinez was discharged because of poor attendance. The policy of both Manpower Temporary Services and Wilton Precision Steel is that absences due to illness require medical documentation. Mr. Martinez was absent due to illness on October 31, October 28, September 16 and September 15, 2008. He did not provide medical documentation for any of those absences. He was absent because of transportation problems on September 10, July 18 and June 28, 2008. Mr. Martinez was counseled both by supervisors at Wilton Precision Steel and by supervisors from Manpower Temporary Services. Mr. Martinez has received unemployment insurance benefits since filing a claim effective November 30, 2008.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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.

Excessive unexcused absenteeism, a concept which includes tardiness, is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absences due to medical conditions are excused for unemployment insurance purposes if they are properly reported to the employer. See Higgins and 871 IAC 24.32(8). The evidence in this record establishes that Mr. Martinez did not properly report the absences due to medical conditions because he did not provide confirming documentation. Absences due to a lack of transportation are unexcused because transportation is a matter of personal responsibility. The evidence in this record is sufficient to establish discharge for excessive unexcused absenteeism. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether the claimant must repay unemployment insurance benefits he has already received is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated January 30, 2009, reference 05, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The question of whether he must repay benefits already received is remanded to the Unemployment Insurance Services Division.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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