

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN B POGGEMILLER

Claimant

APPEAL NO. 12A-UI-09992-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INTERNATIONAL INC

Employer

OC: 10/09/11

Claimant: Respondent (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Manpower, filed an appeal from a decision dated August 6, 2012, reference 05. The decision allowed benefits to the claimant, Steven Poggemiller. After due notice was issued, a hearing was held by telephone conference call on September 12, 2012. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Staffing Specialist Gail Gonyaw.

ISSUE:

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

FINDINGS OF FACT:

Steven Poggemiller was employed by Manpower from June 25, 2012 until July 13, 2012. He was assigned to Cobo International on a long-term assignment. At the time of hire he was given orientation and policies. The attendance policy requires the employee to notify the client company and Manpower prior to the start of the shift if they are going to be absent.

Mr. Poggemiller was absent July 2, 2012, for a court date but did not call prior to the 7:00 a.m. scheduled start time for his shift. He also did not make arrangements in advance to be gone that day. He was also absent July 9, 11, 12 and 13, 2012, without calling in prior to the shift. He called in after noon on July 11, 2012, after a court date and Staffing Specialist Gail Gonyaw told him to return to work even if only for an hour or two because he was being scrutinized for his attendance. He did not do so. Mr. Poggemiller eventually called in each day but hours after the beginning of the shift. He was removed from the assignment by the request of the client company and was informed of the discharge the afternoon of July 13, 2012.

Steven Poggemiller filed an additional claim for unemployment benefits with an effective date of July 15, 2012. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

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 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant had been advised his job was in jeopardy as a result of his attendance and failure to properly report the absences. In spite of that he continued to be absent and not call in prior to the shift as required to notify the employer. This means the absences were unexcused because they were not properly reported. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

DECISION:

The representative's decision of August 6, 2012, reference 05, is reversed. Steven Poggemiller is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css