

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DWIGHT MCDUGALD**

Claimant

**APPEAL NO: 12A-UI-01039-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANPOWER INTERNATIONAL INC**

Employer

**OC: 12/11/11**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Dwight McDougald (claimant) appealed a representative's January 27, 2012 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Manpower International, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 22, 2012. The claimant participated in the hearing. Lee Ann Gulrud appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

**OUTCOME:**

Reversed. Benefits allowed.

**FINDINGS OF FACT:**

The employer is a temporary employment firm. The claimant sought employment with the employer when his prior full-time employment with Agri-Star Meat & Poultry ended in May 2011. The claimant had worked on the third shift with Agri-Star for his entire employment, which had begun in about October 2010. When he discussed potential employment with the employer, he informed the employer that he was only available for third shift work because he had custody of his two children.

The claimant's first and only assignment with the employer began on May 18, 2011. For the first two or three weeks of the assignment, the claimant worked as a packager on the third shift



shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the claimant's testimony is more credible that he had informed the employer and business client that he could only work the third shift. Under the circumstances of this case, the claimant's absences on June 14 and June 15 cannot be considered unexcused. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. A claimant must remain available for work on the same basis as when his base period wage credits were accrued. 871 IAC 24.22(2)f. The claimant's base period is the third quarter 2010 through the second quarter 2011. Virtually all of the claimant's base period wage credits were earned in third shift work. At least at this time, the claimant's availability restriction to third-shift work is not unduly limiting his availability. 871 IAC 22(2)(a). Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative's January 27, 2012 decision (reference 02) is reversed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/kjw