

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRIS F EDGINGTON

Claimant

APPEAL NO. 06A-UI-10734-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INC OF CEDAR RAPIDS

Employer

**OC: 07/09/06 R: 04
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Chris Edgington filed an appeal from a representative's decision dated November 2, 2006, reference 06, which denied benefits based on his separation from Manpower, Inc. of Cedar Rapids. After due notice was issued, a hearing was held by telephone on November 21, 2006. Mr. Edgington participated personally and offered additional testimony from Andy Krieger. The employer participated by Debbie Chamberlain, Risk Control Manager, and Carol Lauer, Staffing Specialist.

ISSUE:

At issue in this matter is whether Mr. Edgington was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Edgington initially began working through Manpower in 2004. On August 7, 2006, he was placed in an assignment with Metrogroup. The assignment was indefinite duration. Mr. Edgington was discharged from Manpower.

Manpower mails paychecks to employees on Wednesdays with the intent that they be received by the following Friday. Prior to August 11, 2006, there had been occasions on which Mr. Edgington did not receive his check until Saturday or the following Monday. He reported to the Manpower office on Friday, August 11, because he had not yet received his paycheck in the mail. He spoke to Carol Lauer, who explained that the employer had no control over the mail delivery. Mr. Edgington responded by saying that was the same excuse the employer used every time the checks were late. He also stated, "this is shit." He asked to see the paperwork he had completed which indicated the date on which he was to be paid. Ms. Lauer could not locate the document he was referring to. Mr. Edgington continued to repeat that the employer was using the same excuse each time the checks were late. As he was talking, he was standing on the opposite side of the desk at which Ms. Lauer was seated. His voice was somewhat raised and he was moving his hands and arms.

After speaking with Mr. Edgington for several minutes, Ms. Lauer called her manager, Karen Elliott, on the phone and had her speak with him. He made similar statements to Ms. Elliott as

he had made to Ms. Lauer. When Mr. Edgington gave the phone back to Ms. Lauer, she was told by Ms. Elliott to call the police. When advised that the police were being called, Mr. Edgington went outside and remained there until the police arrived. He did not make any threats to anyone during the exchanges with Ms. Lauer and Ms. Elliott. There was one other employee and two individuals registering for work present in the office at the time of the incident. The incident at the Manpower office on August 11, 2006 was the sole reason for Mr. Edgington's discharge.

REASONING AND CONCLUSIONS OF LAW:

Mr. Edgington was discharged from Manpower. 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). Mr. Edgington was discharged as a result of his conduct on August 11, 2006. He went to the Manpower office because he had not received his pay in the mail as expected. It was not unreasonable that he would be upset since this was not the first occasion on which he had failed to receive his pay when expected. This was, however, the first occasion on which he had been demonstrably upset.

Mr. Edgington did use the word "shit" in speaking to Ms. Lauer. This term is not so outrageously profane as to constitute an act of misconduct. There was no name-calling on Mr. Edgington's part and he did not make any threats. The administrative law judge appreciates that Ms. Lauer may have felt intimidated by Mr. Edgington's presence. She had an angry employee standing across the desk from her. However, he did not move towards or otherwise lash out to her. Objectively speaking, the administrative law judge cannot conclude that Mr. Edgington was attempting to intimidate, scare, or threaten Ms. Lauer.

Given the circumstances, the administrative law judge concludes that the single "hot-headed" incident of August 11 is not sufficient to establish a substantial disregard of the employer's standards. Mr. Edgington had failed to receive his pay timely on repeated occasions. His conduct in letting off steam was not deliberate and intentional misconduct. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated November 2, 2006, reference 06, is hereby reversed. Mr. Edgington was discharged by Manpower but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

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