

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRIS D CRAIG
Claimant

APPEAL NO. 12A-UI-01636-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 06/05/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated February 8, 2012, reference 03, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on March 7, 2012. Claimant participated. Employer participated by Ms. Nancy Voelker, Senior Supervisor. Employer's Exhibits One and Two were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Cris Craig was employed by Kelly Services, Inc. from October 25, 2011 until October 28, 2011 when he was discharged from employment. Mr. Craig was assigned to work at the Raing Rose Company as a production/warehouse worker and was paid by the hour.

The claimant was discharged on October 28, 2011 after a background check showed a misdemeanor conviction that had occurred within seven years of the date that Mr. Craig had filled out his application for employment. On the application employees are asked the question whether they have had any convictions, imprisonment, probation or parole for any misdemeanor and Mr. Craig had answered in the negative to that question. During the application process, Mr. Craig had brought up the possibility that a previous old conviction might be within the seven-year time frame but stated that he was unsure if it should be included. The claimant believed that he had been told not to worry about the issue but to wait until the background check came back. Subsequently, the background check came back and it showed a misdemeanor conviction within seven years and Mr. Craig was discharged from employment.

It is the employer's position that applicants personally fill out the application for employment and answer the questions and they are free to change the answers after conferring with the

interviewer. The employer's witness did not recall making statements of that nature to Mr. Craig.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code § 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.

The employer has the burden of establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes conduct justifying termination of employment and what conduct warrants the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits. Such misconduct must be "substantial."

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy but if it fails to meet its burden of proof in establishing job-related

misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

Inasmuch as the evidence in the record establishes that Mr. Craig did not intentionally provide false information regarding his previous criminal history, the administrative law judge concludes that the claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated February 8, 2012, reference 03, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs