

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLE L HAMILTON
Claimant

APPEAL NO. 14A-UI-02716-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 02/02/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 26, 2014, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on April 2, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Meghan Erhart participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer from May 20, 2013, to January 23, 2014. Her last assignment was working full time as a warehouse worker at Raining Rose.

During the time the claimant was working at Raining Rose, she was often absent or left work early due to health issues. She notified the employer when she was absent or left work early. The only warning the claimant received was in September 2013.

The final absences were on January 21, 22, and 23. On January 21, she left work early due to pain in her neck. On January 22 and 23, she called in absent due to continuing problems with her neck. Raining Rose asked that the claimant be removed from the assignment due to her attendance issues. The employer informed the claimant that she was removed from the assignment. The claimant asked whether the employer had further work available, but no work was available at that time.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act." 871 IAC 24.32(8).

The unemployment insurance rules provide: "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." 871 IAC 24.32(7).

While the employer may have been justified in discharging the claimant due to her attendance issues, no current act of work-connected misconduct as defined by the unemployment insurance law has been established. The claimant's final absences were due to legitimate health reasons and were properly reported.

The claimant filed a new claim for benefits effective February 2, 2014. There was testimony offered at the hearing about work offered to the claimant on January 28. The law provides for a disqualification for failing to accept an offer of suitable work without good cause. Iowa Code § 96.5-3. The rules, however, provide that a disqualification can only be imposed if the offer of work and refusal take place during the claimant's benefit year, which in this case would start February 2, 2014. 871 IAC 24.24(8). The refusal issue was not included on the hearing notice, and I therefore cannot make a decision on the issue. 871 IAC 26.14(4) & (5). If the employer believes the claimant is subject to disqualification due to the offer of work made prior to the claimant's benefit year, it should make a request to the Unemployment Insurance Claims Bureau to make a determination on this issue.

DECISION:

The unemployment insurance decision dated February 26, 2014, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css