

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNDE M DUREE

Claimant

APPEAL NO. 07A-UI-03737-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC

Employer

**OC: 03/11/07 R: 02
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cynde Duree filed an appeal from a representative's decision dated April 6, 2007, reference 05, which denied benefits based on her separation from Kelly Services, Inc. After due notice was issued, a hearing was held on May 1, 2007 in Des Moines, Iowa. Ms. Duree participated personally and was represented by Jennifer Donovan, Attorney at Law. The employer participated by Stephanie Webber, Staffing Supervisor. Exhibits One through Four were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Duree 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: Ms. Duree was employed by Kelly Services, Inc., a temporary placement firm, from March 5 through March 14, 2007. She was assigned to work full time for EDS. She was discharged after a background check revealed undisclosed criminal convictions.

One of the questions on the application for employment is whether the applicant has been "convicted of, pled guilty or no contest to, been imprisoned, or been on probation or parole for any misdemeanor" within the past seven (7) years. Ms. Duree checked the "yes" box. In the area where she was to explain her response, she indicated a second OWI in 2004. This charge, an aggravated misdemeanor, stemmed from an arrest on November 21, 2003. She did not note any other misdemeanor convictions. A background check revealed that she entered a guilty plea to a simple misdemeanor (theft) in January of 2003; a serious misdemeanor (leaving the scene of an accident) in January of 2004; and a serious misdemeanor (unlawful possession of prescription drugs) in January of 2004. The background check also revealed Ms. Duree's first OWI, a misdemeanor, for which she was charged on September 13, 2003.

The background check was completed on March 13 and Ms. Duree was discharged on March 14. When questioned about her failure to disclose all criminal convictions, Ms. Duree indicated she did not think she had to disclose them because they were "closed." She would not have been hired if she had listed an accurate criminal history as it is the employer's policy not to hire individuals convicted of theft. The client company, EDS, does not accept placement of individuals who have been convicted of theft as they deal with financial documents. Ms. Duree's background check and her failure to disclose requested information was the sole reason for her discharge.

REASONING AND CONCLUSIONS OF LAW:

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). Ms. Duree was discharged after a background check revealed criminal convictions she had not disclosed on her application for employment. The application clearly requested information for the past seven years. Ms. Duree failed to disclose one simple and two serious misdemeanors. She also failed to disclose her first OWI, which was a misdemeanor that occurred in 2003.

Ms. Duree did not forget she had the convictions that she failed to disclose. She thought that they were "closed" matters since she had successfully completed all terms of sentencing. However, she had not been advised by anyone that the convictions would be expunged from her record. Moreover, she listed her second OWI in spite of the fact that she had successfully completed the terms of the sentencing for the conviction. The administrative law judge appreciates that she may have felt rushed to complete the application for employment. However, it appears from her testimony that she considered whether to list the additional misdemeanors and decided against it. Therefore, time was not an issue in her failure to disclose.

Ms. Duree's failure to disclose her complete criminal history as requested on the application constituted dishonesty, which is contrary to the type of conduct the employer had the right to expect. Her actions had the potential of harming her employer's relationship with EDS. If Kelly Services had known of Ms. Duree's conviction for theft, she would not have been placed with EDS, given the nature of their business and their policy of not hiring individuals convicted of theft. The administrative law judge presumes that EDS relied on Kelly Services to conduct a preliminary screening to make sure that individuals placed with them met at least the minimum criteria for the job. If EDS is sent individuals who do not meet the minimum criteria, it may decide not to seek workers through Kelly Services in the future. Ms. Duree's falsification of her application hampered Kelly Services' ability to make sure only qualified applicants were sent to its client, EDS.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Ms. Duree's falsification constituted misconduct as provided by 871 IAC 24.32(6). Accordingly, benefits are denied.

DECISION:

The representative's decision dated April 6, 2007, reference 05, is hereby affirmed. Ms. Duree was discharged for misconduct in connection with her employment. Benefits are withheld until

such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css