

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KARAM ORM**  
Claimant

**APPEAL NO: 14A-UI-04961-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES INC**  
Employer

**OC: 04/13/14**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 7, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 4, 2014. The claimant participated in the hearing. Lori Smith, District Manager and Meghan Erhart, Senior Recruiter, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Kelly Services last assigned to Raining Rose from November 21, 2013 to January 14, 2014. He was discharged from employment due to a final incident of absenteeism that occurred on January 14, 2014.

The claimant began his assignment with Raining Rose November 12, 2013, and decided to go to the university for orientation November 13, 2013. He could have gone for orientation anytime but decided to go November 13, 2013, because his hands hurt following his first day of work. He was absent for personal reasons December 3, 2013 and because of the weather December 9, 2013. On December 16, 2013, he left a voice mail stating he thought the roads looked bad and he would be in later before arriving two hours late. On December 24, 2013, the claimant was ten minutes tardy and the client spoke to the claimant and told him if he had further incidents his assignment would be ended. On December 26, 2013, after speaking to the client, the employer issued the claimant a final warning about his tardiness and absenteeism. On January 6 and January 14, 2014, the claimant experienced car problems and called in to state he would not be at work on those dates. The client asked that he be removed from the assignment January 14, 2014, and the employer notified the claimant his assignment was over due to his attendance issues. There is no evidence that any of these absences were related to illness.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. 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.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The claimant was absent five days and tardy on two occasions during the approximate two months he worked this assignment. Tardiness and full-day absences are not usually looked at separately but rather together under the description of absenteeism. In this case, a total of seven incidents of absenteeism is excessive and resulted in a poor attendance record. The claimant did not provide a good cause reason for any of his absences or incidents of tardiness. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits are denied.

**DECISION:**

The May 7, 2014, reference 01, decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs