

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEITH HANES
Claimant

APPEAL NO. 13A-UI-12140-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 09/22/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 28, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on November 21, 2013. The claimant participated personally. The employer participated by Tracy Carbis, staffing supervisor. Josh Allen was a witness for the claimant. The record consists of the testimony of Tracy Carbis; the testimony of Keith Hanes; and the testimony of Josh Allen.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a staffing agency. The claimant was hired on November 12, 2012, and assigned to work at Knott Company located in Milan, Illinois. His assignment came to an end on September 16, 2013, after it was discovered that he had falsified his application for employment. The claimant stated that he had a GED or high school diploma when in fact he did not. In addition, the claimant had two misdemeanor violations of open bottle in 2006 and resisting arrest in 2007. These falsifications were discovered in September 2006 when Knott Company was conducting a background check on the claimant. The findings were reported to the employer and the claimant's assignment was ended.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The reason cited by the employer for discharging the claimant is his falsification of his job application. The claimant did in fact falsify his application. However, that does not end the inquiry. The false statement must endanger the health, safety or morals of the applicant or others or result in exposing the employer to legal liabilities or penalties or result in placing the employer in jeopardy. Larson v. Employment Appeal Board, 474 N.W.2d 570 (Iowa 1991). In this case, there is no clear endangerment to the claimant or others or obvious exposure of liability or jeopardy to the employer posed by the claimant's failure to disclose whether he had a GED or high school diploma. The same can be said of the misdemeanor convictions back in 2006 and 2007. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The decision of the representative dated October 28, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs