

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MILDRED A COLE**

Claimant

**APPEAL NO: 14A-UI-11462-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES INC**

Employer

**OC: 09/14/14**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2) – Discharge or Non-Disqualifying Layoff

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's October 28, 2014 (reference 01) determination that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated at the November 25 hearing. The employer did not respond to the hearing notice or participate at the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant registered to work with the employer, a temporary employment firm. When the claimant registered, she does not recall receiving any information about contacting the employer within a certain number of days after an assignment ended. The claimant started a job assignment at Kraft Foods in October 2013. When this assignment ended, the employer assigned the claimant to work at UniSelect. This assignment was a long-term assignment. The claimant was laid off at UniSelect on September 14.

Uniselect called the claimant back to work on September 22, 2014. The claimant understood she would again work at Uniselect on a long-term assignment. On September 26 a couple of hours before the claimant's shift ended, a UniSelect supervisor told her that she was again laid off from work.

The next week the claimant contacted the employer about another assignment. The employer contacted the claimant a few weeks later about work. Although the claimant was ill, she told the employer she would accept the job assignment.

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if a claimant voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. A claimant, who is a temporary employee of a temporary employment firm, may be disqualified from receiving unemployment insurance benefits if she does not notify the temporary employment firm within three working days after completing the job assignment in an attempt to obtain another job assignment. To be disqualified from receiving benefits, at the time of hire the employer must advise in writing about the three-day notification rule and that a claimant may be disqualified from receiving unemployment insurance benefits if she fails to timely notify the employer a job has been completed. Iowa Code § 96.5(1)j. The evidence does not establish that the claimant received in writing notice about the three-day notification rule. As a result, Iowa Code § 96.5(1)j – does not apply. The claimant did not voluntarily quit her employment.

The employer initiated the employment separation when the claimant was laid off from work on September 13 and 26, 2014. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant was laid off from an assignment on September 14 and 26, 2014. The evidence does not establish that she committed work-connected misconduct. As of September 14, 2014 the claimant is qualified to receive benefits.

**DECISION:**

The representative's October 28, 2014 (reference 01) determination is reversed. The claimant did not voluntarily quit. Instead the employer initiated her employment separation by laying her off from work on September 14 and 26, 2014. The claimant did not commit work-connected misconduct. As of September 14, 2014 the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/can