

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY J KELLIS
Claimant

APPEAL NO. 09A-UI-08102-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

**Original Claim: 04/19/09
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Ashley Kellis, filed an appeal from a decision dated May 26, 2009, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 23, 2009. The claimant participated on her own behalf and with witness Patty Walker. The employer, Express Services, participated by Manager Carrie Peterson. Exhibits One and A were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Ashley Kellis was employed by Express Services from August 12, 2008 until April 15, 2009 at Rain and Hail Insurance. Her last day of work was Thursday, April 2, 2009, and she called in absent after that time due to an anxiety disorder. Her doctor's appointment on April 7, 2009, was reported to the employer and she was initially released to return to work April 12, 2009. That was later modified to April 15, 2009, in a doctor's note dated June 9, 2009, nearly two months after the fact. She was no-call/no-show to work on April 13, 14, and 15, 2009, and did not return on April 15, 2009, because she did not personally feel the new medication had taken full effect.

On that day, the client company notified Express Services it did not want Ms. Kellis to return and Manager Carrie Peterson left a message for the claimant on her voice mail telling her not to return to the assignment and to call whenever she wanted to go back to work. Ms. Kellis has not contacted the employer since that time.

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.

871 IAC 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 claimant did properly report most of her absences due to illness. But, the final three days, she was no-call/no-show to work, even though she had been released to return to work by her doctor effective April 15, 2009. Even if those absences were also due to illness, they were not properly reported and are therefore not excused. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). She did not contact Express Services to say she was able to return to work and to request a new assignment but ceased all communication as of April 10, 2009. These are unexcused absences that amount to job abandonment. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of May 26, 2009, reference 02, is affirmed. Ashley Kellis is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw