

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RENADA S BEDFORD
5412 LISBON ST
PROLE IA 50229

KELLY SERVICES INC
999 W BIG BEVER RD
TROY MI 48084-4716

Appeal Number: 06A-UI-04673-AT
OC: 04/02/06 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Renada S. Bedford filed a timely appeal from an unemployment insurance decision dated May 1, 2006, reference 01, which disqualified her for benefits. After due notice was issued, a telephone hearing was held on May 17, 2006, with Ms. Bedford participating. Staffing Supervisor Heidi Hyde participated for the employer, Kelly Services. Claimant Exhibit A was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Renada S. Bedford was employed by Kelly

Services, Inc., from September 19, 2005 through September 26, 2005, on assignment at ING. On September 26 Ms. Bedford called her contact at Kelly Services, Lindsay Gannon, to report that she would be unable to report to work because she and her child had been diagnosed as having whooping cough. Ms. Gannon did not believe that this was the real reason that Ms. Bedford was unable to work. She indicated that if she did not report to work she would be removed from the assignment and would receive no further assignments from Kelly Services. Ms. Bedford had seen her physician, the person who had made the diagnosis.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her work. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the discharge was a current act of misconduct. See 871 IAC 24.32(8). The employer's witness explained that Ms. Gannon was not available to testify because she had left the company. Reading from Ms. Gannon's notes, the employer presented a different rationale for the separation. The claimant, however, testified from personal knowledge under oath and subject to cross-examination. The administrative law judge finds the claimant's testimony to be credible. While excessive unexcused absenteeism is misconduct, absence due to a medical condition properly reported to the employer cannot be held against an individual for unemployment insurance purposes. See 871 IAC 24.32(7). The evidence here persuades the administrative law judge that Ms. Bedford was discharged because of an absence due to personal illness and her child's illness. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated May 1, 2006, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

cs/pjs