

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA WALKER

Claimant

APPEAL NO. 06A-UI-10750-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC

Employer

**OC: 09/03/06 R: 02
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Kelly Services, filed an appeal from a decision dated November 1, 2006, reference 01. The decision allowed benefits to the claimant, Jessica Walker. After due notice was issued, a hearing was held by telephone conference call on November 21, 2006. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Supervisor Stephanie Weber.

ISSUE:

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

FINDINGS OF FACT:

Jessica Walker was employed by Kelly Services September 18 and 19, 2006. She was assigned to EDS for 92 days. One of the questions on the application for employment asked if she had been convicted of any crime involving theft and she answered "no." She was advised after completing the application there would be a background check and she consented to it.

The background check revealed she had been convicted of fifth degree theft in March 2005. Supervisor Kim Harned spoke with the claimant and she stated she thought the matter had been expunged from her record. The employer's policy prohibits accepting anyone for any assignment who has had a conviction involving theft in the past seven years. Ms. Walker was discharged and invited to reapply if the theft conviction was expunged.

Jessica Walker has received unemployment benefits since filing a claim with an effective date of September 3, 2006.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering 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, such falsification shall be an act of misconduct in connection with the employer.

The claimant submitted an application for employment which contained a false answer to the question about any conviction for theft. She had been advised there would not only be a background check but anyone with a conviction for theft in the past seven years would not be assigned to any client companies. Her falsification of the application exposed the employer to customer dissatisfaction but was dishonest on its face. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of November 1, 2006, reference 01, is reversed. Jessica Walker is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$684.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/cs