

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

SIPAPHAY RATSAPHANGTHONG  
PO BOX 573  
DES MOINES IA 50302

KELLY SERVICES INC  
999 W BIG BEAVER RD  
TROY MI 48084 4716

Appeal Number: 05A-UI-03862-DWT  
OC: 03/06/05 R: 02  
Claimant: Respondent (1)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Kelly Services, Inc. (employer) appealed a representative's April 5, 2005 decision (reference 06) that concluded Sipaphay Ratsaphangthong (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 6, 2005. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Sheila Hagen, a staffing coordinator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

On August 5, 2004, did the claimant voluntarily quit her employment without good cause or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant registered to work for the employer in late May 2004. The employer assigned the claimant to a job assignment at EDS on June 14, 2004. The assignment was a temp-to-hire position.

On July 23 and August 2, the employer counseled the claimant about her attendance. In June and July when the claimant did not work as scheduled four days, the claimant was unable to work for medical reasons. On July 23, the claimant agreed she would try to improve her attendance.

On August 5, 2005, the employer received information the claimant was unable to again work as scheduled. The claimant had a doctor's excuse verifying she claimant was unable to work as scheduled on August 5. On August 5, EDS no longer wanted the claimant to work on the assignment and the claimant's employment ended.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer established compelling business reasons for ending the EDS assignment. EDS is the employer's client and the employer must adhere to EDS's policies regarding attendance.

For unemployment insurance purposes, however, the claimant did not commit work-connected misconduct. The claimant did not intend to miss work on. Instead, when she was not at work as scheduled it was because she was unable to work for medical reasons. The claimant's job assignment ended for reasons that do not disqualify the claimant from receiving unemployment insurance benefits. Therefore, the claimant is qualified to receive unemployment insurance benefits based on the reasons for her August 5 employment separation.

The employer's account is subject to charge based on the wage credits the claimant earned between June 14 and August 5, 2004.

**DECISION:**

The representative's April 5, 2005 decision (reference 06) is affirmed. The claimant's job assignment ended on August 5, 2004 for compelling business reasons that do not constitute work-connected misconduct. Based on the reasons for the claimant's August 5, 2004, employment separation, the claimant is not disqualified from receiving benefits as of March 6, 2005. The employer's account may be charged for benefits paid to the claimant.

dlw/sc