

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

KIMBERLY TOLLIVER  
234 FRANKLIN AVE  
DES MOINES IA 50314

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

Appeal Number: 05A-UI-06685-DWT  
OC: 11/28/04 R: 02  
Claimant: Appellant (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:

Kimberly Tolliver (claimant) appealed a representative's June 16, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits because Kelly Services, (employer) discharged her for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 14, 2005. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's witness/representative could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

In October 2004, the claimant registered to work for the employer's business clients. The employer is a temporary staffing firm. The employer assigned the claimant to an office job.

In early April 2005, the employer talked to the claimant about reporting to work late. In mid or late April, the employer again talked to the claimant about continuing attendance problems – reporting to work late or not all – and reminded the claimant that if she was unable to work as scheduled, the employer required her to contact both the client and the employer.

On May 8, 2005, the claimant did not feel well and notified the business client that she was unable to work as scheduled that day. The claimant did not contact the employer. Based on medical reasons, the claimant was unable to return to work until May 11, 2005. Between May 8 and 11, the business client notified the employer that the claimant was no longer needed because she was excessively absent from work. The employer had no idea why the claimant did not report to work on May 8 or any time subsequent to May 8. On May 11, 2005, the employer informed the claimant she was discharged because she had too many absences and failed to properly notify the employer about her absences even after the employer warned her that she needed to contact the employer when she was unable to work as scheduled.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer 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 claimant may have had legitimate medical reasons for being absent from work in May. The claimant, however, intentionally failed to properly notify the employer about her absence in May even after the employer told the claimant in April she needed to contact both the employer and the business client when she was unable to work as scheduled. Since the claimant did not properly report her absences to the employer, the employer discharged her for work-connected misconduct. As of May 8, 2005, the claimant is not qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's June 16, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 8, 2005. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/kjw