

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH L POTTORFF
Claimant

APPEAL NO. 08A-UI-00501-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 04/15/07 R: 02
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kenneth Pottorff filed an appeal from a representative's decision dated January 14, 2008, reference 02, which denied benefits based on his separation from Kelly Services, Inc. (Kelly). After due notice was issued, a hearing was held by telephone on January 30, 2008. Mr. Pottorff participated personally. The employer participated by Krystelle Bishop, Kala Lewis, and Omar Velazco, all Staffing Supervisors.

ISSUE:

At issue in this matter is whether Mr. Pottorff was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Pottorff began working for Kelly on September 3, 2007 and was assigned to work full time for Reiman's Department. A telephone message was left for him on December 20 advising that his services were no longer needed on the assignment. Mr. Pottorff did not receive the message and, therefore, reported for work at his normal time.

Kala Lewis and Omar Velazco confirmed with Mr. Pottorff that his assignment was over. Mr. Pottorff became upset and began voicing complaints about the work assignment. He indicated it was a bad place to work and that things would be run differently if he was in charge. His voice was raised at the time. When he was asked for his badge, he yanked it off his shirt and gave it to Mr. Velazco. He did not voice any threats to anyone on December 20 and did not use any profanity in his exchange with Mr. Velazco and Ms. Lewis. As a result of his conduct of December 20, Kelly decided he would not be sent on any further assignments.

Mr. Pottorff had not been formally disciplined during the course of his employment. On or about October 5, he did raise his voice when talking with Krystelle Bishop over a pay issue. He became upset when she questioned whether he had properly clocked in and out. He became upset with Mr. Velazco approximately one week before the separation when he reported to work

and was told there was no work that day. He was upset because he had not been given timely notice that there would be no work.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The decision to discharge Mr. Pottorff from Kelly was based on his conduct of December 20. He was upset that he had reported to work only to learn that he no longer had a job. Although he had his voice raised, he did not use profanity or other inappropriate language. He did not threaten anyone during the incident. While the comments he made may have reflected poor judgment, they did not evince a willful or wanton disregard of the employer's interests or standards.

The administrative law judge does not believe Mr. Pottorff threw his badge at Mr. Velazco. Ms. Lewis did not indicate in her testimony that the badge was thrown. The administrative law judge appreciates that there were two other occasions on which Mr. Pottorff raised his voice. However, no disciplinary action was taken after he raised his voice to Ms. Bishop when the two were discussing a pay issue in October. Although he raised his voice when speaking to Mr. Velazco approximately one week before the discharge, the administrative law judge is not inclined to believe that he was actually yelling. It was not unreasonable for him to be upset after reporting to work and being told that there was no work. Neither of the above two incidents involved the use of profanity.

It is unreasonable to expect employees to be docile and well-mannered at all times. Although Mr. Pottorff raised his voice, his conduct fell short of being insubordinate. The administrative law judge does not dispute that he may have been an unsatisfactory employee. However, his conduct did not rise to the level of disqualifying misconduct. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, the administrative law judge concludes that substantial misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated January 14, 2008, reference 02, is hereby reversed. Mr. Pottorff was discharged by Kelly but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs