

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JALEXUS M CROOKS
Claimant

APPEAL NO. 15A-UI-06913-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 05/10/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kelly Services (employer) appealed a representative's June 9, 2015, decision (reference 03) that concluded Jalexus Crooks (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 22, 2015. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Michelle Ekman, Senior Staffing Supervisor. The employer offered and Exhibit One was received into evidence. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment agency. The claimant was hired on October 3, 2013, as a temporary employee. On September 23, 2013, she signed the Release and Consent for Drug Screening before she was hired. The claimant signed for receipt of the employer's handbook and the Drug Free Workplace and Substance Abuse Policy on October 27, 2014. She worked on assignment from March 25 to July 21, 2014. The claimant submitted to a pre-assignment drug screen on October 24, 2014, before being hired for her last assignment. She worked her last assignment from October 27 to November 3, 2014, as a full-time assembly worker assigned to work at Omega Cabinets. On November 3, 2014, the employer called the claimant on the telephone. The employer told her she was terminated for testing positive on her pre-screen for marijuana.

The claimant filed for unemployment insurance benefits with an effective date of May 10, 2015. The employer participated personally at the fact-finding interview on June 3, 2015, by Michelle Ekman.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Code Section 730.5(9) requires that a written drug screen policy be provided to every employee subject to testing. Iowa Code Section 730.5(7)(i)(1) mandates that an employer, upon a confirmed positive drug or alcohol test by a certified laboratory, notify the employee of the test results by certified mail and the right to obtain a confirmatory test before taking disciplinary action against an employee. The Iowa Supreme Court has held that an employer may not "benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." Eaton v. Iowa Employment Appeal Board, 602 N.W.2d at 558. The employer failed to give the claimant notice of the test results according to the strict and explicit statutory requirements. Benefits are allowed.

DECISION:

The representative's June 9, 2015, decision (reference 03) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs