

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEREMY J SMITH**

Claimant

**APPEAL NO. 08A-UI-00224-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES INC**

Employer

**OC: 12/24/06 R: 01  
Claimant: Appellant (5)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Jeremy Smith, filed an appeal from a decision dated December 31, 2007, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 23, 2008. The claimant participated on his own behalf. The employer, Kelly Services, participated by Staffing Manager Janelle Phillips and Staffing Supervisor Carol Baird.

**ISSUE:**

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

**FINDINGS OF FACT:**

Jeremy Smith was employed by Kelly Services beginning September 23, 2001 and ending December 10, 2007. During that time, he had four long-term assignments. He was removed from one in January 2006 for excessive absenteeism. His last assignment began March 12, 2007, at Kawasaki Manufacturing and was to be long term. He worked the third shift from 11:00 p.m. until 7:00 a.m.

On the morning of December 10, 2007, Staffing Manager Carol Baird was on site at Kawasaki and was notified by the night supervisor Mr. Smith had walked off the job around 2:00 a.m. She was given statements written by Mr. Smith and two witnesses to the event. The claimant's statement did not specify anything in particular that caused him to walk off the job, only that he had been studying business law and business practices. The statements from the two witnesses indicated they had not seen or heard anything that prompted the claimant to leave.

Mr. Smith called Ms. Baird later in the morning and asked whether he was fired or was he considered a quit. She told him he had quit the assignment but based on a review of his employment record, walking off this job and the prior dismissal for attendance, he would not be offered any further assignments from Kelly Services. Mr. Smith's testimony at the hearing was that he had walked off the job because a Kawasaki employee had made a statement that the plant was "going to be the next Skidmore." This was a reference to Skidmore, Missouri, a town

with several notorious murders. He stated he felt personally threatened but did not notify the supervisor, merely walked off the job, then later came back to talk to the supervisor who asked him to write the statement.

### **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.

The claimant quit his assignment, but his separation from Kelly Services was a discharge when he was notified he would not be offered further assignments. This was prompted by his prior dismissal for absenteeism, and the final incident of walking off his current assignment.

Mr. Smith maintained he walked off because his co-workers were "being shady," but could not give an adequate explanation as to what he meant by that other than these people had stopped talking and socializing with him. The comment about Skidmore appears to have been addressed to him but it is not clear exactly to what, or whom, it was referring in the workplace context. He stated he felt his life was being threatened because three months before another co-worker had acted as if he were going to stab the claimant with a file in a joking manner. None of these incidents were reported to the on-site supervisor or Kelly Services, nor did he request to be assigned elsewhere.

The statement he offered in writing, and verbally to Ms. Baird, did not make reference to any of these incidents, only general discourse on his study of business law and corporate business

practices. Other witnesses did not report anything out of the ordinary that prompted him to leave.

The record establishes the claimant left the assignment without good cause, jeopardizing Kelly Service's relations with its client. This was also the case with his absenteeism on a prior assignment, which prompted the client company to request his removal. This is conduct not in the best interests of the employer and the claimant is disqualified.

**DECISION:**

The representative's decision of December 31, 2007, reference 02, is modified without effect. Jeremy Smith was discharged for misconduct and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw