

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD A GIRTLEY
Claimant

APPEAL NO. 07A-UI-09097-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 08/26/07 R: 03
Claimant: Respondent (2)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Kelly Services, Inc. filed an appeal from a representative's decision dated September 21, 2007, reference 01, which held that no disqualification would be imposed regarding Donald Girtley's separation from employment. After due notice was issued, a hearing was held by telephone on October 9, 2007. Mr. Girtley participated personally. The employer participated by Kris Kolbe, Supervisor.

ISSUE:

At issue in this matter is whether Mr. Girtley 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. Girtley began working for Kelly Services, Inc. on November 21, 2006. He was assigned to work full time for Moore Wallis. He was removed from the assignment on August 10, 2007 due to repeated tardiness.

Mr. Girtley had been working an evening shift but switched to a day shift on July 2, 2007. He was late reporting to work on ten occasions after he changed shifts. The tardiness ranged from 1 minute to 37 minutes. The tardiness was due to the fact that Mr. Girtley had to rely on a bus to get to work. He was verbally warned about his tardiness on July 16. The decision to remove him from the assignment was prompted by the fact that he was ten minutes late on August 10, 2007. He declined further work with Kelly Services, Inc. because he did not have his own transportation.

REASONING AND CONCLUSIONS OF LAW:

When Mr. Girtley filed his claim for job insurance benefits, he was unemployed because he had been discharged from his last assignment. Although Kelly Services, Inc. was his employer and was willing to provide him with additional work, the fact remains that he was unemployed due to

a discharge from work. 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).

Mr. Girtley was discharged because of his attendance. An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Tardiness in reporting to work is considered a limited absence from work. Mr. Girtley was late seven times before receiving a verbal warning about his tardiness. In spite of the verbal warning, he was late an additional three times thereafter. All of the tardiness was due to the fact that he relied on the bus to get to work. Absences caused by matters of personal responsibility, such as transportation, are not excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

Mr. Girtley had seven periods of unexcused absenteeism during the period from July 2 through August 10, three of which occurred after he was verbally warned about his tardiness. The tardiness identified herein constituted excessive unexcused absenteeism, which is a substantial disregard of the standards an employer has the right to expect. The administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Mr. Girtley has received job insurance benefits since filing his claim effective August 26, 2007. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated September 21, 2007, reference 01, is hereby reversed. Mr. Girtley was unemployed because he was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Girtley has been overpaid \$1,128.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs