

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHY YOUNG**

Claimant

**APPEAL NO. 08A-UI-05967-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES INC**

Employer

**OC: 05/18/08 R: 02  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Kathy Young filed an appeal from a representative's decision dated June 18, 2008, reference 01, which denied benefits based on her separation from Kelly Services, Inc. After due notice was issued, a hearing was held by telephone on July 15, 2008. Ms. Young participated personally. The employer participated by Kala Lewis, Staffing Supervisor. Exhibits One and Two were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Young 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: Ms. Young began working through Kelly Services, Inc. on September 15, 2006. She had four separate assignments with EDS, the last of which began on November 19, 2007. She worked full time on each of the assignments. Ms. Young was periodically counseled regarding her attendance while working for EDS.

During her last assignment with EDS, Ms. Young was late on two occasions due to transportation issues. She was late on December 12 and January 16 because her ride was late. She was absent on January 28 because she did not have transportation to work. On that date, she was told not to return to the assignment. However, she was told on January 29 to return to the assignment on January 30. Ms. Young was told that her position would be terminated if her attendance issues continued.

Ms. Young was absent from work on February 4 for medical reasons. She was absent on February 6 because of weather conditions, as there was a major snowstorm that prevented her from getting to work. She worked her normal shift on February 7. She was at work on February 8 when she fell after having a dizzy spell. She had experienced dizzy spells at work on prior occasions and had fallen on at least one other occasion. The supervisor felt the dizzy spells posed a danger to Ms. Young while working in the warehouse and, therefore, requested

her removal from the assignment. The supervisor indicated he would recommend her for a position outside the warehouse.

**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). After considering all of the evidence, the administrative law judge concludes that Ms. Young was discharged because she presented a danger to herself due to the dizzy spells and falls she experienced while working in the warehouse. She was not discharged because of her attendance. Ms. Young was brought back to EDS on January 30 in spite of whatever attendance issues existed when she was released on January 28. Although she was warned about her attendance on January 29, she was not discharged after her next absence on February 4 or her absence of February 6. She was not discharged until February 8 after she fell at work.

It is clear from the supervisor's notes that Ms. Young was being released because it was felt she posed a danger to herself working in the warehouse as a result of her dizzy spells. The supervisor's willingness to recommend her for work outside the warehouse suggests that her attendance was not a factor in the decision to remove her from the assignment. Ms. Young's dizzy spells were apparently the result of a medical condition. As such, it was not conduct over which she had control. Therefore, the decision to remove her from the assignment was not based on disqualifying misconduct. Accordingly, benefits are allowed.

**DECISION:**

The representative's decision dated June 18, 2008, reference 01, is hereby reversed. Ms. Young was discharged by Kelly Services, Inc., but not for misconduct. Benefits are allowed, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw