

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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KELLY SERVICES INC  
999 W BIG BEAVER RD  
TROY MI 48084-4716

Appeal Number: 04A-UI-01353-ET  
OC 01-04-04 R 02  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 3, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 1, 2004. The claimant participated in the hearing with his mother, Kim Chapin. Kalani Brown, Employee Focus Supervisor, participated in the hearing on behalf of the employer.

#### FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer service agent for Kelly Services, assigned to EDS, from June 2, 2003 to December 18, 2003. The claimant was absent July 9; August 4; August 14; September 7; September 22; October 4; October 6; and November 17, 2003. The claimant received verbal warnings regarding his attendance October 10, 2003, and November 17, 2003. On November 21, 2003, the claimant received a final verbal warning about his attendance and was told he could not miss any more work in November or December or he could lose his job. On December 13, 2003, the claimant told the employer he had to leave four hours before the end of his shift because his dog was being put to sleep. On December 14, 2003, the claimant called and said he could not work because his dog had not been put to sleep but he needed to stay with him. On December 16, 2003, the claimant met with the employer and received a final written warning for excessive absenteeism. He was not scheduled to work December 17, 2003. On December 18, 2003, the claimant called the employer and left a message stating he would not be at work because his dog was being euthanized. The claimant and his mother testified Kalani Brown, Employee Focus Supervisor, left a voice mail message for the claimant at 5:00 p.m. stating his employment was terminated due to his attendance. Mr. Brown testified he did not leave a termination message for the claimant and it is not the employer's policy to discharge an employee by leaving a phone message. The employer's records indicated the claimant was a no-call/no-show December 20 and 21, 2003, and it considered him to have voluntarily quit his job.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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, (7) 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Although the employer denied that it left a message terminating the claimant's employment December 18, 2003, the claimant and his mother's testimony about the message was credible and the administrative law judge concludes the employer discharged the claimant for excessive absenteeism. The claimant accumulated at least 11 unexcused attendance occurrences between July 9 and December 18, 2003, and the employer has established that the claimant was warned that further unexcused absences could result in termination of employment. The claimant's last three absences, spread over five days, were due to the illness and euthanization of his dog and while the claimant argues those absences were covered by the employer's policy regarding the death of an immediate family member because the dog lived with him and it was the "same as if (his) brother was deathly ill," the administrative law judge cannot agree with his interpretation of the policy. The claimant's final absence was not due to his own illness and he was not the only member of his family available to care for the family pet. The claimant had at least eight unexcused absences in the five months preceding the final three absences in December 2003 and, consequently, the final absences, in combination with the claimant's history of absenteeism, are considered excessive. Benefits are denied.

#### DECISION:

The February 3, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

je/b