

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RYAN J NUSS**  
Claimant

**APPEAL NO. 11A-UI-07362-PT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES INC**  
Employer

**OC: 05/01/11**  
**Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Leaving  
Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from the June 1, 2011, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on June 29, 2011. The claimant participated. The employer participated through Angela Wieck.

**ISSUE:**

The issue is whether claimant was voluntarily quit employment without good cause attributable to the employer or whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was employed through the employer performing various temporary work from February 25, 2010 through April 14, 2011. Claimant was assigned to work. The claimant completed this assignment. He was subsequently asked to come in for work on the following Saturday but he could not come in that day because he needed to visit a relative that was ill.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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 did not quit his employment. He simply declined an additional day of work because he needed to visit a relative that was ill. The claimant's testimony is given greater weight on this issue than the employer's hearsay records. The claimant was laid off when he completed his assignment on April 14, 2011. Benefits are allowed, if otherwise eligible.

**DECISION:**

The June 1, 2011, reference 01, decision is affirmed. Benefits are allowed, provided the claimant meets all other eligibility requirements.

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Ron Pohlman  
Administrative Law Judge

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Decision Dated and Mailed

rrp/pjs