

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

ZALE M JANSEN  
205 – 4<sup>TH</sup> ST APT #708  
DES MOINES IA 50309

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

Appeal Number: 05A-UI-02050-D  
OC: 01/30/05 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

STATEMENT OF THE CASE:

Zale M. Jansen (claimant) appealed a representative's February 24, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Kelly Services, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, an in-person hearing was held on March 17, 2005. The claimant participated in the hearing. Patty Cairns appeared on the employer's behalf and presented testimony from one other witness, Lindsay Gannon. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant's first and only assignment began on January 5, 2004. His last day on the assignment was January 24, 2005. He worked full time as a material-handling specialist for the employer's business client. The assignment ended because the employer determined to end it that day because of the claimant's conduct.

The claimant's work schedule was from 7:00 a.m. to 3:30 p.m., although he usually started working earlier and stayed working later as he was dependent upon public transportation, and the bus schedule was such that he would arrive early and leave late. As of January 24, 2005, the claimant had been not feeling well for some time, and on that day, he decided he needed to take the next day off so he could recuperate. The employer has an on-site office at the business client's location. At approximately 11:30 a.m., the claimant went into the employer's office to inform the employer that he needed to take the next day off. He first spoke to Ms. Gannon, the administrative assistant, who told him that he would need to fill out a request form and get the signature of the business client supervisor. The claimant became upset and began making vulgar statements, indicating that he should not have fill out the form, saying that it was "b - - - s - - -" and that he should not "f - - - ing have to fill it out." Ms. Gannon then directed the claimant to speak to Ms. Cairns, the employer's on-site staffing coordinator.

Going into Ms. Cairn's office, the claimant was very agitated and continued using the "f-word" and the "b - - - s - - -" words. Ms. Cairns repeatedly told him to calm down. When he persisted in using the language, even though he eventually agreed to fill out a leave form, she told him that he should forget filling out the form, that he was being dismissed.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code §96.5-2-a.

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.

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).

The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents. Myers v. Employment Appeal Board, 462 N.W.2d 734, 738 (Iowa App. 1990). While the claimant denied using the language, he has not provided any reasonable explanation as to why both Ms. Gannon and Ms. Cairns, who provided first-hand testimony that he had used the language, should not be believed. The administrative law judge finds that the employer's witnesses' testimony is more credible. The claimant's use of vulgar language shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

#### DECISION:

The representative's February 24, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of January 24, 2005. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

ld/kjf