

Pursuant to the remand, due notice was issued scheduling the matter for a telephone hearing on October 18, 2005. Ms. Taylor participated personally. The employer participated by Sheila Krainz, Supervisor.

#### 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. Taylor began working for Kelly Services, Inc. on August 2, 2004 and was assigned to work full time for Federal Mogul. She was removed from the assignment at the request of the client company because of her attendance. Prior to June 29, 2005, all of her absences were due to medical reasons or were with prior authorization. She had not been warned that her attendance was jeopardizing her continued placement on the assignment.

On June 29, Ms. Taylor was absent but did not contact either Kelly Services, Inc. or Federal Mogul before the start of her shift. She was scheduled to be at work a 7:00 a.m. but did not report her absence until approximately 11:30 a.m. She was required to contact Kelly Services, Inc. if she was going to be absent. As a result of the absence of June 29, Federal Mogul requested that Ms. Taylor not return to the assignment. She had previously been advised that July 1, 2005 would be her last day on the assignment as her services would not be needed beyond that date.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Taylor was separated from employment for any disqualifying reason. She became unemployed when Federal Mogul requested that she not return to her assignment. There was no evidence that Ms. Taylor intended to sever her employment relationship. The fact that she failed to timely report her absence of June 29 is not sufficient, standing alone, to indicate an intent to leave the employment. The administrative law judge concludes that the separation was initiated by the employer and is, therefore, a discharge.

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). Ms. Taylor was discharged because of her attendance. An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Absences that are for reasonable cause and are properly reported are considered excused absences. The evidence of record establishes only one unexcused absence on Ms. Taylor's record, that of June 29, 2005. Her remaining absences are excused as they were for reasonable cause, illness, and were properly reported. The absence of June 29 is unexcused as it was not properly reported to either Federal Mogul or Kelly Services, Inc.

The administrative law judge concludes that Ms. Taylor's one unexcused absence is not sufficient to establish excessive unexcused absenteeism within the meaning of the law. She did not have a history of failing to report absences and had not been warned about her attendance. Her one occasion of negligence is not sufficient to establish a substantial disregard of the employer's interests or standards. It is concluded, therefore, that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated July 25, 2005, reference 02, is hereby affirmed. Ms. Taylor was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/s