

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TEGAN ISLEMAN**  
Claimant

**APPEAL NO. 09A-UI-04816-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES INC**  
Employer

**Original Claim: 04-13-08  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.5(1)j – Voluntary Leaving (Temporary Employment)

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 24, 2009, reference 05, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 22, 2009. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement as required by the hearing notice.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct and whether the claimant sought reassignment from the employer.

**FINDINGS OF FACT:**

The claimant was employed as a full-time scanner for Kelly Services last assigned at Farm Bureau from September 2008 to February 25, 2009. On February 24, 2009, the claimant's father could not wake her up for work for a few hours and finally got her up and took her to see her physician. The claimant described her symptoms such as not being able to move or talk and the doctor stated it was a symptom of what is commonly known as the date rape drug. The claimant had been out the night before and had one drink. Her father called Kelly Services at 10:00 a.m. and explained what happened and that they had a doctor's note and the employer would not accept the doctor's note and responded that the claimant's employment was terminated. The claimant asked if there was anything she could do to keep her assignment at Farm Bureau or her employment with Kelly Services and the employer said no. Consequently, the claimant did not call the employer for another assignment. She was absent on one other occasion for a prearranged medical checkup and had not been warned about her attendance or anything else during her tenure with the employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with good cause attributable to the employer.

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.

Iowa Code section 96.5-1-j 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, but the individual shall not be disqualified if the department finds that:

j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary

employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

The claimant was absent due to a medical situation June 25, 2009. The claimant went to a physician who believed she was slipped the date rape drug the evening of June 24, 2008. When the claimant's father called the employer to say they were at the doctor and the claimant called after they returned home they were told the claimant's assignment and employment was terminated and would not accept her doctor's note. The claimant had one previous excused absence and had not received any warnings. The employer has not established misconduct on the part of the claimant as defined by Iowa law. The remaining issue is whether the claimant sought reassignment from the employer. In this case the employer not only terminated her assignment, it terminated her employment with Kelly Services. Consequently, the claimant is not required to seek reassignment from the employer.

**DECISION:**

The March 24, 2009, reference 05, decision is reversed. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw