

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID FUNK**  
Claimant

**APPEAL NO. 07A-UI-01088-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES INC**  
Employer

**OC: 01-07-07 R: 02**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 24, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 14, 2007. The claimant participated in the hearing. Dan Freeberry, Operations Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**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 KMS Coach for Kelly Services from October 24, 2005 to January 8, 2007. On October 10, 2006, the claimant received a verbal warning for failing to follow policy. On December 20, 2006, he was placed on a performance improvement plan because he was not training new staff correctly, was advising employees on other coach's shifts what to do, and was not handling matters in a timely manner. He was told he needed to improve his time management and office organization. On January 4, 2007, he received three written warnings after a temporary employee was observed "messing around" with the customer's equipment and the claimant issued a written warning after talking to the customer coach instead of taking the problem to the operations manager, where he would have learned the customer's policy in those situations was removal of the offending employee. He received the second written warning for failing to log in all employees attending a safety meeting, so three were not placed in the system. The claimant testified he wrote them down but made an error when transferring them to the computer. The third warning was issued because it was reported that the claimant was overheard telling another employee to prop a door open, which violates security protocol. The claimant testified he did say prop the door open but meant for the other individual to do so with his body. On January 8, 2007, the claimant received a written warning and performance improvement plan and was terminated for the preceding violations.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The claimant was discharged due to allegations of not working fast and efficiently according to the employer's expectations. The claimant had received warnings about his job performance but did not believe his job was in jeopardy and performed the work to the best of his ability. While the claimant did make several errors, the administrative law judge cannot conclude that his actions were intentional and, consequently, his behavior does not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed

**DECISION:**

The January 24, 2007, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/kjw