

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERI A CLEMMENSEN
Claimant

APPEAL NO. 07A-UI-04810-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 06/18/06 R: 03
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sheri Clemmensen filed an appeal from a representative's decision dated May 1, 2007, reference 02, which denied benefits based on her separation from Kelly Services, Inc. After due notice was issued, a hearing was held by telephone on May 29, 2007. Ms. Clemmensen participated personally. The employer participated by Kris Kolbe, Supervisor.

ISSUE:

At issue in this matter is whether Ms. Clemmensen was separated from employment for any disqualifying reason.

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. Clemmensen began working through Kelly Services, Inc. on June 12, 2006. On January 24, 2007, she was placed on an assignment with Mercy Hospital to work full time. She was to work until the individual she replaced returned to work. She was released from the assignment on April 5 because of her attendance.

Ms. Clemmensen was three hours late on January 29 because she overslept. She was 15 minutes late on February 15. She was 2 hours and 45 minutes late on February 16. Ms. Clemmensen was three hours and 45 minutes late on March 1. She was approximately four hours late on March 5 and an hour late on March 6. She was three hours late on March 20 and 45 minutes late on March 29. Ms. Clemmensen was an hour and 45 minutes late on March 30. She was counseled regarding her attendance on February 5, February 7 and March 22. She was one hour and 15 minutes late on April 3 due to a power failure. Ms. Clemmensen was absent on April 5 because she took her dog to the vet, as she believed the dog had conjunctivitis. When she returned home from the vet, she received a message that she was not to return to the assignment with Mercy Hospital. Attendance was the sole reason for her separation from employment.

Ms. Clemmensen worked in the linen department at Mercy Hospital. The dust in the air caused her to have a sinus infection for which she was prescribed antibiotics in March of 2007. She had difficulty sleeping at night and overslept on some mornings.

REASONING AND CONCLUSIONS OF LAW:

Ms. Clemmensen filed an additional claim for job insurance benefits effective April 1, 2007. She was unemployed at that time because she had been discharged from a temporary work assignment. 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). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Tardiness in reporting to work is considered a limited absence from work.

Ms. Clemmensen was late on at least ten occasions after she started the assignment with Mercy Hospital. She contended that her tardiness was a result of her work environment in that the dust in the air caused her to have a sinus infection. She further contended that the infection resulted in her being unable to sleep at night and oversleeping the following morning. She began the assignment on Wednesday, January 24, and was three hours late the following Monday, January 29. It seems unlikely that she would have developed a sinus infection after such a brief period of work. Although she may have had difficulty sleeping, the administrative law judge is not inclined to believe that she slept through her alarm on all the occasions identified herein. There were two occasions on which she was late by less than one hour. On the remaining occasions, she was late by more than one hour. On three occasions, she was late by at least three hours. The administrative law judge is not satisfied that the tardiness was beyond Ms. Clemmensen's control. She is given the benefit of any doubt regarding the tardiness of April 3, as it was reportedly due to a power failure. The tardiness of that date will be considered excused.

Ms. Clemmensen had been counseled regarding her attendance. In spite of the counselings, she did not conform her attendance to the employer's expectations. Her final absence was due to the fact that she took her dog to the vet on April 5. The absence is unexcused, as it was due to a purely personal matter. The absenteeism that caused Ms. Clemmensen's discharge occurred during a period slightly in excess of two months. Nine occasions of unexcused tardiness and one unexcused absence during a two-month period is sufficient to establish excessive unexcused absenteeism within the meaning of the law. As such, Ms. Clemmensen is not entitled to job insurance benefits.

DECISION:

The representative's decision dated May 1, 2007, reference 02, is hereby affirmed. Ms. Clemmensen was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw