

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

JOSE V MORENO
800 S COMMERCIAL AVE
EAGLE GROVE IA 50533

KELLY SERVICES INC
999 W BIG BEAVER RD
TROY MI 48084 4716

Appeal Number: 05A-UI-11274-DWT
OC: 10/09/05 R: 01
Claimant: Respondent (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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Kelly Services, Inc. (employer) appealed a representative's October 31, 2005 decision (reference 03) that concluded Jose V. Moreno (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's employment separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 6, 2005. The claimant participated in the hearing. Ike Rocha interpreted the hearing. Connie Pletcher, a staffing supervisor, appeared on the employer's behalf. 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:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant registered to work on behalf of the employer's business clients in mid-February 2005. The employer assigned the claimant to a job on June 17, 2005. During this assignment, the employer gave the claimant a verbal warning on September 19 about the importance of contacting the employer prior to his 7:00 a.m. start time when he was unable to work as scheduled.

On October 8, 2005, the claimant's grandchild was born in Des Moines. The claimant went to Des Moines because his grandchild was born with a cleft palate and needed surgery. The claimant contacted a co-worker and asked the co-worker to let the employer know he was unable to work as scheduled on October 10, 2005. The co-worker did not contact the employer as the claimant had asked.

The employer informed the claimant on October 10 that he no longer worked for the employer because this was the third time he had not contacted the employer when he was unable to work. The claimant planned to return to work on October 11, 2005. If the co-worker had told the employer about the claimant's absence before the shift started, the claimant could still be working at the job assignment.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. Even though the claimant did not call or report to work on October 10, he did not intend to quit. The employer initiated the employment separation and discharged or removed the claimant from the assignment.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence

or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew and understood the employer required employees to contact the employer before a scheduled his shift when the employee was unable to work as scheduled. Even though the employer talked to the claimant a month earlier about the importance of notifying the employer about an absence, the employer did not warn the claimant that his job was in jeopardy. After the claimant learned his newborn grandchild needed surgery, he went to Des Moines. While the claimant did not contact the employer himself, he took reasonable steps to let the employer know he would not be at work on October 10, 2005. The claimant left unexpectedly and contacted a co-worker the claimant believed would convey his message to the employer in a timely way. The employer admitted that if the employer had learned about the claimant's absence prior to his shift, the claimant's employment would not have ended.

At most the claimant made an error in judgment when he did not personally contact the employer and notify the employer about his absence. The claimant did not intentionally or substantially disregard the employer's interests. The claimant took reasonable steps to inform the employer about his absence. The facts do not establish that the claimant committed work-connected misconduct. Therefore, as of October 9, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's October 31, 2005 decision (reference 03) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of October 9, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjw