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

MARIA L BOONE
Claimant

KELLY SERVICES INC
Employer

APPEAL NO. 08A-UI-02286-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/27/08   R: 02
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Kelly Services, Inc. employer) appealed a representative's February 28, 2008 decision (reference 01) that concluded Maria L. Boone (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 24, 2008. The claimant participated in the hearing. Jessica Fedders 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 employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant applied to work for the employer on November 19, 2007. The employer assigned the claimant to a job at EDS that same day. Prior to January 25, 2008, the claimant reported to the employer that her EDS supervisor was rude to her.

On January 25, 2008, the claimant asked her EDS supervisor a question. Instead of answering her question, he talked to the claimant about her call history. Initially, the claimant understood her supervisor was satisfied with her work but that she needed to have shorter or more efficient calls. The discussion continued with the claimant asking her supervisor about quality control initials and what the initials meant. The conversation between the two of them deteriorated to the point that her supervisor snatched a piece of paper from the claimant's hand. The claimant considered the EDS supervisor's conduct rude and unprofessional when he grabbed a piece of paper from her hand. The claimant again went to the employer to complain about the EDS supervisor's rude behavior toward her.

About the same time the claimant complained about her supervisor's rude behavior, he sent the employer an email complaining about the claimant's rude behavior toward him. The EDS supervisor told the employer to end the claimant's assignment immediately. When the employer

told the claimant about the email, the claimant understood the employer would investigate and consider both perspectives in deciding whether the employer would assign the claimant to another assignment.

Even though the claimant asked for another assignment, the employer did not assign her to another job. Based on the EDS supervisor's complaint, the employer decided the claimant would not be assigned to another job because of her rude attitude and behavior toward a supervisor.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 employer relied on unsupported hearsay information from an EDS supervisor who did not testify at the hearing. As a result, the claimant's testimony must be given more weight than a written complaint from the EDS supervisor. A preponderance of the evidence establishes the supervisor was rude to the claimant. Even if the claimant failed to conduct herself professionally when the EDS supervisor talked to her about work performance issues, there is no evidence that the claimant's job was in jeopardy prior to the January 25, 2008 conversation. An isolated incident does not rise to the level of work-connected misconduct.

The employer established business reasons for discharging the claimant, but the facts do not establish that the claimant intentionally or substantially disregarded the employer's interests. The claimant did not commit work-connected misconduct. Therefore, as of January 27, 2008, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base period employers. During her current benefit year, the employer's account will not be charged.

DECISION:

The representative's February 28, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of January 27, 2008, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements.   During the claimant's current benefit year, the employer's account will not be charged.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw