

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

**RICHARD L HAINES**  
**7631 HICKMAN RD #234**  
**DES MOINES IA 50322-4543**

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

**Appeal Number: 06A-UI-00867-CT**  
**OC: 11/27/05 R: 02**  
**Claimant: Appellant (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Richard Haines filed an appeal from a representative's decision dated January 11, 2006, reference 01, which denied benefits based on his separation from Kelly Services, Inc. After due notice was issued, a hearing was held by telephone on February 7, 2006. Mr. Haines participated personally. The employer participated by Malay Bouaphakeo, Staffing Coordinator.

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: Mr. Haines began working through Kelly Services, Inc. on February 21, 2005, and was assigned to work for EDS as a full-time customer service representative. He was released from the assignment because he was not meeting standards.

The quality of his work was measured on a monthly basis. A score of 3.0 was considered satisfactory performance. Mr. Haines failed to meet the necessary score in April, May, and June.

Part of the reason for Mr. Haines' low scores was that he was spending too much time on other matters between calls. The other reason for his low scores was the fact that he was not following the script provided for certain calls. As a customer service representative, he was expected to try to save orders when a customer called to cancel. The employer provided him with a script to follow to rebut reasons offered by a customer for canceling. Mr. Haines felt uncomfortable with the script. It appears that he had ethical concerns about trying to talk a customer out of exercising the right to cancel an order. Mr. Haines was counseled regarding his performance on those occasions when his scores were less than satisfactory. On August 16, 2005, he was given a written warning putting him on notice that his continued employment was in jeopardy. When Mr. Haines continued to fail to meet standards, he was discharged on September 26, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Haines was separated from employment for any disqualifying reason. 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). Mr. Haines was released from his assignment with EDS because he failed to meet their standards. He failed to meet standards due, in part, to his refusal to follow the script for saving cancellations. After hearing his testimony, the administrative law judge is of the opinion that his refusal was not based on the fact that the script did not address those situations he was faced with, but on the fact that he felt it was inappropriate to try to talk the customers out of canceling. It also appears from his testimony that he did not feel it was part of the job for which he was hired. Mr. Haines was aware of what EDS expected in terms of job performance. His refusal to try to save cancellations constituted a substantial disregard of the standards expected of him. After repeated counseling and a written warning, Mr. Haines still refused to conform his performance to the employer's expectations. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established. Accordingly, benefits are denied.

Mr. Haines may have requalified for job insurance benefits after his separation from Kelly Services, Inc. He should present proof of his subsequent earnings to his local office so that a decision can be made as to whether he had requalified for benefits when he filed his claim for job insurance benefits effective November 27, 2005.

#### DECISION:

The representative's decision dated January 11, 2006, reference 01, is hereby affirmed. Mr. Haines was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/kjw