

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARRIE E HANSON
Claimant

APPEAL NO. 09A-UI-06751-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

**Original Claim: 03/22/09
Claimant: Respondent (2/R)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Kelly Services, Inc. (employer) appealed a representative's April 28, 2009 decision (reference 02) that concluded Carrie E. Hanson (claimant) was qualified to receive 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 May 28, 2009. The claimant participated in the hearing. Kris Kolbe, a senior 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 employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing agency. On May 5, 2008, the claimant registered and was assigned to a job that she began that day. When the claimant completed her job application, she did not disclose all her previous criminal charges. The employer's handbook and the acknowledgment of the employee handbook form informs employees they must notify the employer of any charges or convictions of any criminal offense. Although the claimant received a copy of the handbook, she did not read it.

On June 4, 2008, the claimant was charged with a controlled substance violation. The claimant did not report this charge to the employer. The client where the claimant worked had suspicions about the claimant and asked to have a criminal background check completed on her. The background check revealed the June 4, 2008 charge. Since the claimant had not yet gone to court to resolve the charge, she had not reported the charge to the employer.

As a result of the background check and the claimant's failure to report the June 4, 2008 charge, the claimant was discharged on September 22, 2008. On November 3, 2008, the claimant received a deferred judgment regarding the June 4, 2008 charge.

The claimant established a claim for benefits during the week of March 22, 2009. The claimant has filed and received benefits since March 22, 2009.

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. 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).

Failure to read the employer's handbook does not excuse the claimant from following the employer's rules. The claimant acknowledges she received the handbook but did not read the information, or at least all of the information. Since the employer requires employees to report any charges of criminal offenses, the claimant's failure to report her June 4, 2008 charge amounts to an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for work-connected misconduct. As of March 22, 2009, the claimant is not qualified to receive benefits.

Since the claimant has filed for and received benefits after she established her claim, the issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

DECISION:

The representative's April 28, 2009 decision (reference 02) is reversed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 22, 2009. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw