

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHELLEY M STEIG
Claimant

APPEAL NO. 06A-UI-10350-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 09/17/06 R: 03
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Kelly Services, filed an appeal from a decision dated October 18, 2006, reference 03. The decision allowed benefits to the claimant, Shelley Steig. After due notice was issued a hearing was held by telephone conference call on November 7, 2006. The claimant participated on her own behalf. The employer participated by On-Site Staffing Supervisor Jessica Fedders.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Shelley Steig was employed by Kelly Services from September 11 through 19, 2006. She was assigned to the EDS warehouse for three to six months. The application Ms. Steig filled out for employment asked if she had been convicted, plead guilty or no contest to, been imprisoned or on probation or parole for any misdemeanor in the last seven years. The claimant answered no. The employer did a background check and found a conviction in January 1999 of drunk driving and assault on a law enforcement officer. She was put on two years of probation.

The employer was advised of this on September 16, 2006, and questioned the claimant on September 19, 2006. The claimant thought the seven-year period began with the date of conviction and sentencing which was more than seven years before she filled out the application. However, the employer considered that the two years of probation ended in 2001 and was therefore within the seven year period, and discharged her.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

The administrative law judge considers the claimant to have made a good-faith error when she answered "no" to the question about the misdemeanor. The conviction and sentencing were more than seven years prior to her filling out the application and she did not consider the probation period itself. There is no evidence of an attempt to deliberately falsify the application and disqualification may not be imposed.

DECISION:

The representative's decision of October 18, 2006, reference 03, is affirmed. Shelley Steig is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs