

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANNON M WEDDING**  
Claimant

**APPEAL NO. 11A-UI-12430-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES INC**  
Employer

**OC: 08/14/11**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's September 14, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Nancy Voelker appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons that constitute work-connected misconduct?

**FINDINGS OF FACT:**

The claimant registered to work for the employer in June 2010. The employer assigned the claimant to work at AEGON two times. The second assignment started on October 25, 2010.

The employer sent the claimant a written warning on June 28, 2011. The employer mailed the claimant the warning so she would understand AEGON considered her to have excessive absenteeism and that her job was in jeopardy. The claimant understood that when she received the warning on July 8, her job was in jeopardy if she had any more attendance issues. From November 29, 2010, through June 17, 2011, the claimant had been absent more than 25 days.

The claimant has a medical issue and there are mornings she has to take pain medication before she can work. When the claimant took medication, she was unable to work the first four hours of her shift.

After the claimant received the June 28 written warning, she was an hour late on July 11. She was late because she did not have any electricity for an hour and could not get ready for work. She was absent on July 14, 15, and 18 for medical reasons and was four hours late for medical reasons on July 27. The claimant was again four hours late for work on August 10 for medical reasons and was late for work on August 12. When the claimant was unable to work as scheduled, she notified the employer. She also gave the employer doctor's statements verifying she was unable to work when she was absent a day or more. The claimant did not improve her attendance after receiving the June 28 written warning. The client then asked the employer to end the claimant's assignment due

to her excessive absenteeism. As a result of her continued attendance issues, the claimant's productivity did not meet the client's standards.

When the employer informed the claimant her job assignment was over on August 12, the employer considered assigning the claimant to another job. The claimant established a claim for benefits during the week of August 14, 2011.

On September 1, the employer decided the claimant would not be assigned to another job. The employer based this decision on the claimant's failure to call the employer as instructed and failing to bring in her AEGON badge as she told the employer she would do. The claimant mailed her badge directly to AEGON.

#### **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 law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

After the claimant received the June 28 written warning, she knew or should have known her job was in jeopardy for her on-going attendance issues. After she received the warning on July 8, her most recent attendance issues occurred because of a medical issue the claimant was being treated for by a physician. The employer established justifiable business reasons for ending the claimant's job assignment, but she properly notified the employer when she had to be absent or late. Her most recent absences occurred because of medical issues the claimant was being treated for. The claimant established reasonable grounds for her absences. The claimant did not intentionally fail to work as scheduled. She did not commit work-connected misconduct.

Even though the employer decided the claimant would not be assigned to another job, the claimant's employment separation occurred on August 12, 2011, when AEGON asked the employer to remove the claimant from their assignment. As of August 14, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements.

#### **DECISION:**

The representative's September 14, 2011 determination (reference 01) is affirmed. The employer established justifiable business reasons for ending the claimant's assignment on August 12, 2011. Even though the claimant had ongoing attendance issues, she established reasonable grounds for her absenteeism, a medical condition she was being treated for. The claimant did not commit work-connected misconduct. As of August 14, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw