

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES O VANCE**  
Claimant

**APPEAL NO. 09A-UI-11006-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES INC**  
Employer

**OC: 06/28/09**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, James Vance, filed an appeal from a decision dated July 28, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 17, 2009. The claimant participated on his own behalf. The employer, Kelly Services, participated by Staffing Supervisor Matt Olsen.

**ISSUE:**

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

**FINDINGS OF FACT:**

James Vance was employed by Kelly Services from October 30, 2006 until June 29, 2009. His last assignment was at EDS and began on March 31, 2009. On the morning of June 29, 2009, Mr. Vance and another Kelly Services employee arrived at work and were assigned to move product from wooden pallets to plastic pallets for shipping. This is a job they had never done before and after they had started the on-site EDS supervisor began to berate them because they had not put new plastic wrap on the product after it was moved. The supervisor used abusive and profane language.

After completing the task the claimant walked off the job stating the supervisor had been unprofessional and he would return the next day after talking to the supervisor's supervisor. That person, Eric, was out on medical leave and so the claimant sent him an e-mail. The Kelly Services on-site supervisor, Kayla Lewis, contacted Mr. Vance later that day and asked him what had happened. He described the EDS supervisor's conduct and language and said he felt it was unprofessional and totally uncalled for. Ms. Lewis said she would get back to him and when she did, notified him that the decision had been made for him not to continue at EDS or with Kelly Services.

## 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.

The claimant was discharged for walking off the job. He did state he intended to return the next day and so this cannot be considered a voluntary quit. After leaving Mr. Vance did make an attempt to notify both the client and the employer about the supervisor's inappropriate conduct and language but Kelly Services opted to side with the client and remove him not only from the assignment but from Kelly Services available labor pool.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case the employer has not presented any evidence of willful and deliberate misconduct on the part of the claimant and disqualification may not be imposed.

**DECISION:**

The representative's decision of July 28, 2009, reference 01, is reversed. James Vance is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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