

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LONNY L MORISHITA
Claimant

APPEAL NO. 10A-UI-12446-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

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

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 2, 2010 (reference 02) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on October 28, 2010. Claimant participated. Employer participated through Connie Pletcher.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer or if he was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a laborer assigned at Kraft on September 29, 2008 and was separated from employment on November 23, 2009. His last day of work was October 19, 2009. Claimant left for preapproved vacation from November 9 through 14, 2009 in advance of the scheduled October 22, 2009 plant shutdown because his father was dying at the time. He told Jones the reason he was going to California. The plant resumed work October 26, 2009 but claimant was still in California. Claimant had very limited access to a phone while in California so he called his wife and asked her to notify the employer he would not return because his father, age 102, was deteriorating. She relayed the message to the employer who approved the continued absence between November 14 through 20, 2009. His father died on November 9, 2009 but claimant was unable to arrange burial until November 17, 2009 and he left to return to Iowa on November 18. He returned from California on November 20, 2009, called the employer on November 23, and spoke to Brad Jones about returning to work that day for his normal afternoon shift but Jones told him he was already separated. He offered Jones the medical and funeral documentation but it was refused.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code § 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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Because claimant kept in communication with the employer through his wife and returned to offer his services, he has established an intention to continue working. Thus, the separation was a discharge. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). A failure to report to work without notification to the employer is generally considered an unexcused absence. However, claimant's wife reported his continued absence to the employer and explained the situation, which was reasonable given the circumstances. Since no work was available when he returned and offered documentation to support the reason for the absence the employer has not established job misconduct. Benefits are allowed.

DECISION:

The September 2, 2010 (reference 02) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs