

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA I TELLO-GUILLEN
Claimant

APPEAL NO. 08A-UI-05332-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 05/04/08 R: 02
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kelly Services, Inc. filed an appeal from a representative's decision dated June 2, 2008, reference 02, which held that no disqualification would be imposed regarding Maria Tello-Guillen's separation from employment. After due notice was issued, a hearing was held by telephone on June 18, 2008. Ms. Tello-Guillen participated personally. The employer participated by Omar Velazco, Staffing Supervisor. The hearing record was left open to arrange an interpreter for Ms. Tello-Guillen's witnesses. The hearing reconvened on July 15, 2008. Ms. Tello-Guillen participated personally and offered additional testimony from Hermelinda Tello. The employer again participated by Mr. Velazco. Patricia Vargas participated as the interpreter.

ISSUE:

At issue in this matter is whether Ms. Tello-Guillen was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Tello-Guillen was employed by Kelly Services, Inc. from August 28, 2006 until May 2, 2008. Her last assignment was with EDS, where she began working on February 18, 2008. She was removed from the assignment based on an allegation that she referred to a line leader, Michelle, as "lazy." Ms. Tello-Guillen and her team had been sent to Michelle's area to assist. Ms. Tello-Guillen told Michelle that she and her team were feeling lazy that day. The only prior disciplinary action against Ms. Tello-Guillen was a warning she received on or about April 23, 2008, when it was discovered that she had makeup in her notepad rather than the place where damaged product was supposed to be placed. It was her intent to take the damaged merchandise to the appropriate area all at one time rather than as she came across it.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Tello-Guillen was discharged from her assignment at EDS because of an allegation that she referred to a coworker as “lazy,” an allegation she denied under oath. The employer did not provide testimony or evidence from any individual who witnessed the behavior that brought about the discharge.

Even if the administrative law judge were to find that Ms. Tello-Guillen did, in fact, refer to Michelle as “lazy,” disqualifying misconduct still would not be established. It is unreasonable to expect employees to be docile and well-mannered at all times. An isolated reference to a coworker as “lazy” would not constitute a substantial disregard for the employer’s interests or standards. The administrative law judge appreciates that Kelly Services, Inc. may not have had a choice in whether Ms. Tello-Guillen could continue to work for EDS. However, the fact remains that her separation from the assignment was not due to misconduct as that term is defined by law. For the reasons cited herein, it is concluded that the employer has failed to satisfy its burden of proving that Ms. Tello-Guillen should be disqualified from receiving job insurance benefits.

DECISION:

The representative’s decision dated June 2, 2008, reference 02, is hereby affirmed. Ms. Tello-Guillen was discharged, but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw