

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JULIO A RODRIGUEZ**  
Claimant

**APPEAL NO. 09A-UI-05108-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES INC**  
Employer

**Original Claim: 07/20/08  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Julio A. Rodriguez filed a timely appeal from an unemployment insurance decision dated March 31, 2009, reference 03, that disqualified him for benefits. After due notice was issued, a telephone hearing was held May 5, 2009, with Mr. Rodriguez participating. Staffing Supervisor Kara Lewis participated for the employer, Kelly Services, Inc. Ike Rocha served as the interpreter.

**ISSUE:**

Was the claimant discharged for misconduct in connection with his employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Julio A. Rodriguez was first hired by Kelly Services, Inc., on October 17, 2005. On December 31, 2008, he began an assignment at Electronic Data Systems. He was discharged on February 12, 2009. The events leading to the discharge occurred on February 6, 2009. Mr. Rodriguez left the workplace sometime after 11:00 a.m. without clocking out. He came back at approximately 3:30 p.m. and then clocked out as if he had worked the full day. In addition to failing to notify the client company, he did not notify Kelly Services that he was leaving during the middle of the day. He also failed to clock out for lunch at noon as was the policy. He could not be found by his lead worker after 11:00 a.m. that day.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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 evidence persuades the administrative law judge that Mr. Rodriguez deliberately left the employer's place of business without notice and without clocking out. It also establishes that he returned near the end of the workday to clock out as if he had worked the entire shift. The administrative law judge concludes that these events establish deliberate actions contrary to the employer's interests. Benefits are withheld.

**DECISION:**

The unemployment insurance decision dated March 31, 2009, reference 03, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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