

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FRANK R HOLT**  
Claimant

**APPEAL NO. 06A-UI-10059-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES INC**  
Employer

**OC: 07/09/06 R: 01  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Kelly Services (employer) appealed a representative's October 11, 2006 decision (reference 03) that concluded Frank Holt (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 30, 2006. The claimant participated personally. The employer participated by Jason Saffold, District Manager. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 24, 2005, as a temporary worker. At the time of his hire the claimant completed a background information sheet which asked him within the last seven years he had been convicted of, pled guilty or no contest to, been imprisoned, or been on probation or parole for any misdemeanor. The claimant marked the "no" box. At the bottom of the form the claimant certified that the information was correct by signing his name and dating it September 28, 2005. The claimant learned to read at a minimal level later in life and did not fully understand the questions. The claimant was convicted of a misdemeanor in 2003 for writing an insufficient funds check.

The employer assigned the claimant to work at one assignment from October 24, 2005, to April 14, 2006. The employer assigned the claimant to work at a second assignment from May 2 until July 3, 2006. Both times the employer did a felony background check on the claimant and the claimant's record was clean.

On August 8, 2006, the employer assigned the claimant to work at EDS as a full-time pick and pack worker. This time the employer requested a felony and misdemeanor background check. On or about August 31, 2006, the employer received the results and found that the claimant had

a fifth degree theft simple misdemeanor on his record. The employer asked the claimant to provide documentation of the status of the offense. The claimant did not understand the request. When he finally provided the documentation, the employer terminated him for having a conviction on his record. The claimant's last day of work was September 12, 2006.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in

jeopardy, such falsification shall be an act of misconduct in connection with the employer.

Misconduct serious enough to warrant a discharge is not necessarily serious enough to warrant a denial of unemployment benefits. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). In the present case, the employer may legitimately have been concerned about the claimant's past writing of an insufficient funds check. However, there is no evidence the claimant was writing bad checks at any time during his employment, or that he had written any other bad checks in the previous three years. While understanding the concerns of the employer, the judge does not believe it has established the falsification of the application could have exposed it or its workers to harm or liability sufficient to warrant a disqualification of unemployment benefits. The employer did not perform a misdemeanor background check for nearly one year from the time the claimant was hired. The employer has failed to prove any evidence of work-related misconduct. Benefits are allowed.

**DECISION:**

The representative's October 11, 2006 decision (reference 03) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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