

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

VIVIAN J WENDLING
1446 – 2ND ST SE
CEDAR RAPIDS IA 52401

REMEDY INTELLIGENT STAFFING INC
C/o TALX UC EXPRESS
PO BOX 66864
ST LOUIS MO 63166-6864

Appeal Number: 04A-UI-11978-CT
OC: 09/19/04 R: 03
Claimant: Respondent (3)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Remedy Intelligent Staffing, Inc. (Remedy) filed an appeal from a representative's decision dated October 27, 2004, reference 01, which held that no disqualification would be imposed regarding Vivian Wendling's separation from employment. After due notice was issued, a hearing was held by telephone on December 2, 2004. Ms. Wendling participated personally. The employer participated by Dawn Starr, Staffing Consultant. Exhibits One through Six were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Wendling worked for Remedy from May 11, 2003 until

June 25, 2004. She was at all times assigned to work full-time hours at CCB Packaging. She was discharged because of her attendance.

It appears that Ms. Wendling's last day at work was June 16, 2004. Thereafter, she called in each day to report that she would be absent but did not specify a reason. On June 17, she began training for a new job with J & S Flagging. She learned that she had been discharged from Remedy when she went to get her paycheck on June 25. In the past, Ms. Wendling's pay had been reduced and raises denied based on her unsatisfactory attendance. Her attendance was the sole reason for her discharge.

According to records of Workforce Development, Ms. Wendling earned at least ten times her weekly benefit amount in insured wages after her separation from Remedy. The wages were earned during the third quarter of 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Wendling was separated from employment for any disqualifying reason. 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). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences.

Ms. Wendling's final absences starting June 17 were due to the fact that she was in training for another job. The administrative law judge does not consider this good cause for missing scheduled work with Remedy. As such, the absences are considered unexcused. Given the fact that she had been denied raises and had her wages reduced because of attendance, Ms. Wendling knew or should have known that unacceptable attendance might lead to her discharge. She knew or should have known that missing seven consecutive days in order to train with a new employer was contrary to the type of conduct Remedy expected of her. For the above reasons, the administrative law judge concludes that Ms. Wendling's absences beginning June 17, 2004 are sufficient to establish a substantial disregard of the employer's standards. As such, the separation is considered a disqualifying event.

After the separation from Remedy, Ms. Wendling earned at least ten times her weekly benefit amount in insured wages prior to filing her claim effective September 19, 2004. Therefore, she has requalified for benefits. Benefits paid as a result of the decision herein shall not be charged to Remedy's account.

DECISION:

The representative's decision dated October 27, 2004, reference 01, is hereby modified. Ms. Wendling was discharged for misconduct in connection with her employment with Remedy but has requalified for benefits. Benefits are allowed, provided she satisfies all other conditions of eligibility, but shall not be charged to Remedy's account.

cfc/b