

**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**

**MARTIN K ROLLEN  
1139 – 26<sup>TH</sup> ST #2  
DES MOINES IA 50311**

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

**Appeal Number: 04A-UI-00326-CT  
OC: 11/30/03 R: 02  
Claimant: Respondent (1)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(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 January 5, 2004, reference 01, which held that no disqualification would be imposed regarding Martin Rollen's separation from employment. After due notice was issued, a hearing was held by telephone on February 2, 2004. Mr. Rollen participated personally. The employer participated by Wendy Mesenbrink, Customer Service Supervisor. Exhibits One and Two 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: Mr. Rollen was employed by Remedy, a temporary placement service, from June 11, 2002 until August 29, 2003. He worked full time for Praxair Distribution (Praxair) beginning June 24, 2003. The employer considered him to have voluntarily quit because he was absent without calling Remedy on August 28.

Mr. Rollen was scheduled to report to work at 8:00 a.m. on August 28. Because he had to take his sister to the hospital, he was not at home to call Remedy but asked his girlfriend to call work for him. She apparently called Praxair rather than Remedy. Mr. Rollen, himself, called Praxair at approximately 9:00 a.m. and spoke to his supervisor. When he reported to work on August 29, he was sent home and not allowed to continue working for Praxair. Remedy has not offered him any further work since August 29, 2003.

On April 10, 2003, Praxair notified Remedy that Mr. Rollen was not at work. He had made prior arrangements with his supervisor to be absent because he had a court date. Praxair was to notify Remedy that he would be absent. Mr. Rollen had been verbally warned that his absences were to be reported to Remedy and not to his work assignment.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Rollen was separated from employment for any disqualifying reason. The employer contended that he quit by not calling to report his absence of August 28. In order for there to be a voluntary quit, there must be evidence that the individual intended to sever his employment relationship and evidence of some overt act of carrying out that intent. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The fact that Mr. Rollen reported to work on August 29 is evidence that he did not intend to end his employment relationship. It was the employer's decision that he would not be allowed to return to the assignment. Therefore, the separation is considered a discharge.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). There must be a final, current act of misconduct in order to impose a disqualification from benefits. See 871 IAC 24.32(8). It is true that Mr. Rollen failed to properly report his absence of August 28. His girlfriend called the work site and not Remedy as required. Mr. Rollen was not at home at the time due to a family emergency. Therefore, the failure to properly report the absence was excusable under the circumstances. As such, it did not constitute an act of misconduct.

The next most prior unexcused absence was that of April 10, 2003. This absence was too remote in time to be considered a current act in relation to the August 29 discharge. Inasmuch as the evidence failed to establish a current act of misconduct, no disqualification is imposed.

#### DECISION:

The representative's decision dated January 5, 2004, reference 01, is hereby affirmed. Mr. Rollen was discharged but disqualifying misconduct has not been established by the evidence. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf