

**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**

**CRAIG S DAVIS
201 N VINE
ROLAND IA 50236**

**HELPING HANDS
TEMPORARY SERVICES INC
27 N CENTER ST
MARSHALLTOWN IA 50158-4912**

**Appeal Number: 04A-UI-00523-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, 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:

Helping Hands Temporary Services, Inc. filed an appeal from a representative's decision dated January 6, 2004, reference 01, which held that no disqualification would be imposed regarding Craig Davis' separation from employment. After due notice was issued, a hearing was held by telephone on February 6, 2004. Mr. Davis participated personally. The employer participated by Arlene Wenzel, Owner.

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. Davis began accepting assignments through Helping Hands in February of 2003. His last assignment prior to filing his claim for job insurance benefits was with Barilla America, where he completed a one-day assignment on November 22, 2003. He had worked there periodically since September.

On November 24, Helping Hands received an answering machine message asking that Mr. Davis not be sent back on future assignments. Barilla America indicated they did not want him to return because he had run the pallet jack into the walls of the facility. Helping Hands was not provided specifics as to when this incident(s) occurred or the circumstances surrounding the incident(s). When given this as the reason he could not return to the assignment, Mr. Davis denied that he had run the pallet jack into the walls on any occasions.

On a prior assignment with a different company, there had been a concern regarding Mr. Davis' use of safety glasses. The concern was addressed, resolved, and Mr. Davis was allowed to continue working for an additional six months before the assignment ended. After Barilla America indicated safety concerns with Mr. Davis, Helping Hands decided not to offer him any further work.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Davis was separated from employment for any disqualifying reason. He was unemployed when he filed his claim because he had been discharged by Helping Hands. 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). Mr. Davis was discharged because Barilla America indicated he had run the pallet jack into the walls of its facility, an allegation he denied to Helping Hands and under oath during the hearing. The employer did not present testimony or a statement from any individual who actually observed Mr. Davis striking the walls with a pallet jack.

It is true that a different company had raised safety concerns about Mr. Davis. Those concerns were not the same or similar to those raised by Barilla America. On the other assignment, the concern was with his use of safety glasses, not the operation of equipment. Moreover, the problem was corrected early on in the assignment and Mr. Davis was allowed to continue working.

The administrative law judge believes Helping Hands placed good-faith reliance on the accuracy of the information provided by Barilla America in making the decision to discharge Mr. Davis. However, that information is not sufficient to satisfy the employer's burden of proving misconduct in light of Mr. Davis' credible, sworn denial that he struck the walls of the facility with the pallet jack. For the reasons stated herein, the administrative law judge concludes that the employer has failed to establish disqualifying misconduct. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated January 6, 2004, reference 01, is hereby affirmed. Mr. Davis was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/b