

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

COREY M BRUCE  
2710 FLEUR DR #10  
DES MOINES IA 50321

REMEDY INTELLIGENT STAFFING INC  
% TALX UC EXPRESS  
P O BOX 66864  
ST LOUIS MO 63166-6864

Appeal Number: 04A-UI-02227-CT  
OC: 01/25/04 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 February 19, 2004, reference 02, which held that no disqualification would be imposed regarding Corey Bruce's separation from employment. After due notice was issued, a hearing was held by telephone on March 18, 2004. The employer participated by Wendy Mesenbrink, Customer Service Supervisor. Exhibits One and Two were admitted on the employer's behalf. Mr. Bruce did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Bruce began working through Remedy, a temporary

placement firm, in September of 2002. He was at all times assigned to work at Wells Fargo Home Mortgage. At the time of separation, he was a full-time customer service representative. Mr. Bruce was discharged because of his attendance.

Mr. Bruce was late reporting to work on four occasions, the last of which was on January 2, 2004. He had been absent on a number of occasions for unknown reasons. The decision was made to discharge him from the assignment after he called in on January 16 to report that he would be absent. He had never been warned that his attendance was jeopardizing his continued employment. He had received a verbal warning from Remedy on July 10, 2003 because he was reporting his absences directly to Wells Fargo rather than Remedy as required. He was never disciplined again for not properly reporting absences in spite of the fact that he continued calling Wells Fargo and not Remedy after the warning. Attendance was the sole reason for Mr. Bruce's January 16, 2004 separation.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Bruce was separated from employment for any disqualifying reason. He was unemployed because he had been discharged from his assignment with Wells Fargo. 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. Bruce was discharged because of excessive absences. The reasons for his absences are unknown. Without knowing the reasons for the absences, the administrative law judge cannot find that they are unexcused. The evidence of record does not establish any good cause for Mr. Bruce's tardiness. However, his last incident of tardiness was on January 2, two weeks prior to the discharge. Given the passage of time, that episode of tardiness would not be a current act of misconduct in relation to the discharge date.

Mr. Bruce was not discharged because he was not properly reporting his absences to Remedy. It is true that he had been warned to call Remedy to report his absences. However, Remedy did not discharge him when he continued to call Wells Fargo rather than Remedy. Remedy would have known from his time cards that he was missing time from work. Remedy would also know if they had a record of him having called on the days he was absent. Because he was never disciplined again for not calling Remedy, the administrative law judge concludes that Remedy acquiesced to such conduct.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to establish that Mr. Bruce should be disqualified from receiving benefits. Accordingly, benefits are allowed.

#### DECISION:

The representative's decision dated February 19, 2004, reference 02, is hereby affirmed. Mr. Bruce was separated from Remedy for no disqualifying reason. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/s