

**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**

**KATHY SEDLACEK
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CEDAR RAPIDS IA 52405**

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

**Appeal Number: 04A-UI-03764-ET
OC: 12-21-03 R: 03
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/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 23, 2004, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 26, 2004. The claimant participated in the hearing. Kim Ordaz, Staffing Consultant, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time material handler for Remedy Intelligent Staffing from July 28, 2003 to February 18, 2004. She was assigned to work at General Mills. On

February 16, 2004, the employer received a report that the claimant moved a pallet in a "hasty manner" and hit another associate in the leg, causing injury. At the end of the day the claimant's supervisor told her to call Staffing Consultant Kim Ordaz, who told her not to report for work February 17, 2004, because she injured an employee on the line and the employer was investigating the situation. The claimant denied bumping another employee with the pallet and, consequently, Ms. Ordaz decided to investigate the situation further. Three employees separately reported the claimant was in a "bad mood" February 16, 2004, and had slammed her lunch box on the table in the break room. On December 16, 2003, the claimant received a verbal warning about being in bad moods, and on January 23, 2004, her supervisor talked to her again about her moods. The claimant testified she does not talk to people when she is working because she gets sidetracked and cannot do her job and her co-workers interpreted that as being in a bad mood. The employer terminated the claimant's employment February 18, 2004, for injuring another employee.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Although the employer received a report that the claimant injured an employee by hastily pushing a pallet that struck another employee's leg, the claimant did not intend to hit anyone and was not aware the pallet struck the other employee until the employer told her at the end of the day. While the claimant's actions February 16, 2004, may have been careless, the administrative law judge concludes her behavior does not rise to the level of disqualifying job misconduct as defined by Iowa law. Benefits are allowed.

DECISION:

The March 23, 2004, reference 03, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/b