

**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**

**ANN T TAYLOR
356 – 9TH ST APT #1
MARION IA 52302**

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

**Appeal Number: 05A-UI-03457-RT
OC: 08-01-04 R: 03
Claimant: Respondent (2)**

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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Remedy Temporary Services, Inc., filed a timely appeal from an unemployment insurance decision dated March 21, 2005, reference 03, allowing unemployment insurance benefits to the claimant, Ann T. Taylor. After due notice was issued, a telephone hearing was held on April 20, 2005, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of her witnesses could be reached for the hearing, as instructed in the notice of appeal. Susan Schminke, Co-owner, participated in the hearing for the employer. The administrative law judge

takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer from January 4, 2005 until she was discharged on February 9, 2005. The employer is a temporary employment agency and at all material times hereto the claimant was assigned to Second Story Software. That assignment was a temporary assignment anywhere from one and a half to three months. The claimant did not satisfactorily complete the assignment because she was discharged for her behavior. The claimant repeatedly complained about her hours and pay although she had agreed to the hours and pay when she was first hired. The claimant repeatedly complained about her supervisor and made derogatory comments about her supervisor and about the company, Second Story Software. She made these comments to other co-workers while they were on the phone with customers and the customers could overhear these matters. The claimant caused problems with the other sales representatives. In addition, the claimant had three tardies, one because she needed to stop and get fuses for her home, the second because she misread the schedule and the third because she overslept. The claimant got a verbal warning for each of the tardies. Finally, on February 9, 2005, the claimant was given a verbal warning about her behavior by the employer's witness, Susan Schminke, Co-owner. The claimant then yelled at Ms. Schminke instead of taking the warning to heart and following Ms. Schminke's instructions. Shortly thereafter, on the same day, the claimant was discharged by a telephone call. The claimant earned \$1,683.22 from the employer herein as well as \$2,649.63 from Cambridge Tempositions, Inc., in the fourth quarter of 2004 which together is sufficient to requalify the claimant to receive unemployment insurance benefits following a disqualifying separation from a prior employer on July 28, 2004 by a decision dated August 23, 2004 at reference 01 and affirmed by administrative law judge on September 24, 2004. Pursuant to her claim for unemployment insurance benefits filed effective August 1, 2004 and reopened effective February 6, 2005, the claimant has received no unemployment insurance benefits. Records show no weekly claims for the claimant since benefit week ending September 25, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

The employer's witness, Susan Schminke, Co-owner, credibly testified that the claimant was discharged on February 9, 2005 and the administrative law judge so concludes. In order to be disqualified to receive unemployment insurance benefits pursuant to her discharge, the claimant must have been discharged for disqualifying misconduct. Excessive unexcused absenteeism is disqualifying misconduct and includes tardies and necessarily requires the consideration of past acts and warnings. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct, including, excessive unexcused absenteeism. The evidence establishes that the claimant was tardy on three occasions, one to stop and get fuses

for a personal reason, the next because she misread the schedule and the third because she overslept. The claimant received a verbal warning for each tardy. The administrative law judge concludes that these tardies were not for reasonable cause and were excessive unexcused absenteeism and disqualifying misconduct. Further, Ms. Schminke credibly testified that the claimant repeatedly complained about the hours and pay even though she had approved both when hired and that she repeatedly complained about her supervisor including making derogatory comments about the supervisor and the company to which she was assigned. She made these comments to co-workers while they were on the phone with customers and the customers could overhear the claimant. The claimant's behavior caused problems with the other sales representatives. When the claimant was given a verbal warning for this behavior on February 9, 2005 by Ms. Schminke, the claimant yelled at Ms. Schminke. The administrative law judge concludes that the claimant's behavior here were deliberate acts or omissions constituting a material breach of her duties and obligations arising out of her workers' contract of employment and evince a willful or wanton disregard of the employer's interests and, at the very least, are carelessness or negligence in such a degree of recurrence all as to also establish disqualifying misconduct.

In summary, and for all of the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received no unemployment insurance benefits since filing for such benefits effective August 1, 2004 and reopening her claim for benefits effective February 6, 2005. Since the claimant has received no unemployment insurance benefits, she is not overpaid any such benefits.

DECISION:

The representative's decision of March 21, 2005, reference 03, is reversed. The claimant, Ann T. Taylor, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she was discharged for disqualifying misconduct. Since the claimant has received no unemployment insurance benefits, she is not overpaid any such benefits.

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