

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

JENNIFER L MCCLURE
1800 WATROUS AVE #27B
DES MOINES IA 50315

REMEDY INTELLIGENT STAFFING INC
c/o TALK UC EXPRESS
PO BOX 66864
ST LOUIS MO 63166-6864

Appeal Number: 05A-UI-08250-CT
OC: 06/26/05 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:

Remedy Intelligent Staffing, Inc. (Remedy) filed an appeal from a representative's decision dated July 29, 2005, reference 06, which held that no disqualification would be imposed regarding Jennifer McClure's separation from employment. After due notice was issued, a hearing was held by telephone on August 29, 2005. The employer participated by Wendy Messenbrink, Customer Service Manager. Ms. McClure did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. McClure began working for Remedy on May 4, 2004 and was assigned to work full time at Wells Fargo as a customer service representative. She was discharged because of her attendance.

Ms. McClure missed a number of days of work because of her own illness or that of her child. She left early on June 10 to pick up her boyfriend. She was absent on October 5 due to car trouble. Ms. McClure was late on July 7, August 13, August 18, October 14, and November 5. The tardiness ranged from 15 minutes to 30 minutes. The decision to discharge was prompted by the fact that Ms. McClure called on November 17 to report that she would be absent due to her own illness. She had received at least three verbal warnings about her attendance.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. McClure was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Absences that are for reasonable cause and are properly reported are considered excused absences. Moreover, there must be a current incident of unexcused absenteeism to support a disqualification from benefits.

Ms. McClure did, in fact, have an unsatisfactory attendance history. However, the last unexcused absence was on November 5 when she was 30 minutes late for work. She was discharged in response to the November 17 absence, which was excused as it was due to illness. The tardiness of November 5 did not represent a current act in relation to the November 17 discharge date. Inasmuch as there was no current act of unexcused absenteeism, no disqualification is imposed. While the employer may have had good cause to discharge Ms. McClure, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983).

DECISION:

The representative's decision dated July 29, 2005, reference 06, is hereby affirmed. Ms. McClure was discharged by Remedy but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs