

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

THOMAS D WARD  
1202 AVE 'F'  
FT MADISON IA 52627

REMEDY TEMPORARY SERVICES INC  
C/O TALX UCM SERVICES  
P O BOX 66864  
ST LOUIS MO 63166-6864

Appeal Number: 05A-UI-04782-HT  
OC: 04/03/05 R: 04  
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, 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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Remedy Temporary Services, Inc. (Remedy), filed an appeal from a decision dated April 22, 2005, reference 01. The decision allowed benefits to the claimant, Thomas Ward. After due notice was issued a hearing was held by telephone conference call on May 24, 2005. The claimant participated on his own behalf. The employer participated by Customer Service Supervisor Candy Welch.

#### 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: Thomas Ward was employed by Remedy at Scott's Company from January 5, 2004 until April 5, 2005. He was a full-time warehouse driver.

Mr. Ward received counselings regarding "unsafe acts" on October 16, 2004, for smoking on the premises and November 1, 2004, when he hit a maintenance cart with his forklift. On April 3, 2005, the claimant was operating a fork truck and glanced down at the paperwork in the cab. He lost control of the truck and hit a large pole which is part of the structural support for the building. Mr. Ward reported the incident and was suspended pending investigation. He was discharged the next day by On-Site Manager Shawn McDowell.

Thomas Ward has received unemployment benefits since filing a claim with an effective date of April 3, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

871 IAC 24.23(5) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

The claimant had received counselings for "unsafe acts" during the course of his employment. The last two incidents involved striking a stationary object with his fork truck. This caused damage to the truck and to the pole, and, potentially, to the entire structure. The employer has the right to expect employees to perform their job duties in a safe and prudent manner and this the claimant has failed to do. It is conduct not in the best interests of the employer and he is disqualified.

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 claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of April 22, 2005, reference 01, is reversed. Thomas Ward is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$2,254.00.

bgh/s