

**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**

**ROBERT F VAN DYKE JR  
1640 N COUNTY RD 800  
HAMILTON IL 62341**

**REMEDY TEMPORARY SERVICES INC  
c/o TALK UC EXPRESS  
PO BOX 66864  
ST LOUIS MO 63166-6864**

**Appeal Number: 05A-UI-08252-CT  
OC: 07/03/05 R: 04  
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 Temporary Services, Inc. (Remedy) filed an appeal from a representative's decision dated July 28, 2005, reference 01, which held that no disqualification would be imposed regarding Robert Van Dyke's separation from employment. After due notice was issued, a hearing was held by telephone on August 29, 2005. Mr. Van Dyke participated personally. The employer participated by Angie Vaughn, Branch Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Van Dyke was employed by Remedy from

May 17, 2004 until June 24, 2005. He was at all times assigned to work full time at Scott's Ortho. He was discharged based on an allegation of theft.

On June 17, another employee, Tony, found a bottle of insecticide in the warehouse where he and Mr. Van Dyke worked. As Tony was going to the warehouse office, he met Mr. Van Dyke, who took the bottle of insecticide and wrote "waste line 5" on it. Tony told the employer that Mr. Van Dyke said that was how to get product out of the building. He told Tony he would take the bottle to "dump back." Mr. Van Dyke later gave the bottle to another worker, Chad. The bottle was later found in Chad's locker. Chad acknowledged that Mr. Van Dyke had given him the bottle. No product was found in the locker assigned to Mr. Van Dyke. Mr. Van Dyke was suspended on June 17 and notified of his discharge on June 24.

In making the decision to discharge, the employer considered the fact that Mr. Van Dyke had been less than forthcoming when initially questioned about the matter. He initially indicated that he had found the bottle in the warehouse and had not had conversation with any other employees about it. When it became clear that the employer had already spoken to Tony, Mr. Van Dyke acknowledged that it was Tony who found the bottle. Several days after Mr. Van Dyke's discharge, the warehouse manager was told by another employee that Mr. Van Dyke had asked that another locker he used be opened. The locker had not officially been assigned to Mr. Van Dyke. When it was opened, a bottle of product was found inside. The lock on this locker was not one issued by the company. There were no personal possessions belonging to anyone in the locker, only the product.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Van Dyke 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). Mr. Van Dyke was discharged based on an allegation of theft. No product was found on him or in his locker at the time of discharge. After the discharge, the employer found product in a locker after a report that Mr. Van Dyke requested the locker be opened. The administrative law judge is hard-pressed to believe that Mr. Van Dyke would call back after his discharge and request that the company open a locker in which he had stashed product. To do so would serve no purpose for him. It was not a situation where he would request that the locker be opened so that he could retrieve personal belongings.

Mr. Van Dyke was never found in possession of product belonging to the employer. The employer's case rests on the fact that he gave incorrect information in his statements during the investigation and his statement to Tony about how to get product out of the building. Mr. Van Dyke denied making such a statement to Tony. His only reason for initially giving an untrue account of who found the bottle was that he did not see the necessity of involving others. The administrative law judge does not feel that his untrue statements rise to the level of disqualifying misconduct given the fact that he rehabilitated his statements by giving a true account when pressed.

The administrative law judge makes no determination regarding the employer's right to discharge Mr. Van Dyke. However, conduct that might be grounds for discharge will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department

of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, it is concluded that disqualifying misconduct has not been established and benefits are allowed.

DECISION:

The representative's decision dated July 28, 2005, reference 01, is hereby affirmed. Mr. Van Dyke was discharged by Remedy but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjw