

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**PHIL R BURGESS**

Claimant

**APPEAL NO. 13A-UI-13766-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REMEDY INTELLIGENT STAFFING**

Employer

**OC: 12/16/12**

**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Remedy Intelligent Staffing (Remedy), filed an appeal from a decision dated December 9, 2013, reference 02. The decision allowed benefits to the claimant, Phil Burgess. After due notice was issued, a hearing was held by telephone conference call on January 9, 2014. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Staffing Consultant Augusta Kruger.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits..

**FINDINGS OF FACT:**

Phil Burgess was employed by Remedy beginning May 7, 2005. He was assigned to one client from that point working second shift in the fruit department. On November 11, 2013, the fruit department was slow and he was moved to the cereal department. After three hours of work the claimant believed he was done and left.

The next day he came into the Remedy offices and asked for another assignment. Staffing Consultant August Kruger asked him why he had walked off the job the night before and he said the thought the work was done and he could not find a supervisor in either the fruit or the cereal department. Ms. Kruger tried to get him reinstated at the client but it refused. He was still considered to be eligible for reassignment and went back to work at another client on December 16, 2013.

**REASONING AND CONCLUSIONS OF LAW:**

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.

There has been no separation from employment between Phil Burgess and Remedy. He is an employee still eligible for reassignment and therefore no disqualifying separation has occurred.

**DECISION:**

The unemployment insurance decision dated December 9, 2013, reference 02, is affirmed. Phil Burgess is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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