

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

MEGAN WERTH
3600 PATRICIA DR #3
URBANDALE IA 50322

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

Appeal Number: 05A-UI-11764-CT
OC: 02/13/05 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 November 2, 2005, reference 02, which held that no disqualification would be imposed regarding Megan Werth's separation from employment. After due notice was issued, a hearing was held by telephone on December 6, 2005. The employer participated by Alan Roberts, Manager. Exhibits One through Five were admitted on the employer's behalf. Ms. Werth 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. Werth completed an application for employment with Remedy on October 6, 2003. One of the questions asked on the application is whether the applicant has ever been convicted of a felony, to which Ms. Werth responded "no." On April 19, 2005, she accepted an assignment to work for Wells Fargo and was required to undergo a background check. One of the questions asked on the authorization for the background check is: "Have you ever been convicted of, participated in a pre-trial diversion program with respect to, or are there any pending charges against you involving a criminal offense?" Ms. Werth indicated "no." She cleared the background check and was assigned to work for Wells Fargo.

On July 5, 2005, the police were called to the Wells Fargo location where Ms. Werth worked because of the theft of a purse. The purse was stolen on a day that Ms. Werth had come to the building when she was not scheduled to work and, therefore, she became a suspect in the theft. A police check revealed an outstanding warrant against her for an unrelated matter and she was arrested at the workplace on July 5. The warrant was for a theft charge from 2003. When questioned, Ms. Werth indicated that she had been questioned in 2003 regarding the theft but had no knowledge that there was an outstanding warrant against her. The employer checked with the police and was advised that attempts had been made to serve the warrant but that those attempts had been unsuccessful. The police were unable to confirm that Ms. Werth had knowledge of the existence of the pending charges from 2003.

The employer believed that Ms. Werth did know about the 2003 charges when she completed her application for employment and her authorization for the background check. Therefore, it was concluded that she had falsified the applications. The employer also felt that Ms. Werth's arrest at the client company's work site reflected negatively on Remedy. She was discharged from Remedy effective July 5, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Werth 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). One of the reasons for Ms. Werth's discharge was the allegation that she falsified applications for employment. She did not falsify the application filed with Remedy on October 6, 2003 because she had not, in fact, been convicted of any felony at the time the application was completed. Therefore, her answer was true and accurate. The question asked on the authorization for the background check for Wells Fargo asked about pending charges. Although there were charges pending at the time, the evidence does not establish that Ms. Werth was aware that the charges were pending. The fact that the charges did not come up when the background check was done lends some credence to Ms. Werth's contention that she was not aware of the pending charges. On the evidence presented, the administrative law judge cannot conclude that she was aware of the charges when she completed the authorization for the background check. Therefore, she did not knowingly give false information on the document.

The other reason for the discharge was the fact that Ms. Werth's arrest at the workplace reflected adversely on Remedy. However, Ms. Werth had no control over when or where she

might be arrested. As such, the fact of the arrest was not an act of misconduct. After considering all of the evidence, the administrative law judge concludes that the employer has failed to establish disqualifying misconduct. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated November 2, 2005, reference 02, is hereby affirmed. Ms. Werth was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/tjc