

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

DAVID B LARSON
501 W WOODLAND AVE #3
OTTUMWA IA 52501

EXCEL CORPORATION
% TALX UC EXPRESS
P O BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-09920-CT
OC: 08/15/04 R: 03
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:

Excel Corporation filed an appeal from a representative's decision dated September 3, 2004, reference 02, which held that no disqualification would be imposed regarding David Larson's separation from employment. After due notice was issued, a hearing was held by telephone on October 6, 2004. Mr. Larson participated personally. The employer participated by Nick Statler, Human Resources Assistant Manager. Exhibits One through Nine were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Larson was employed by Excel from May 12, 2003 until August 2, 2004 as a full-time production worker. He was discharged based on an allegation that he cut into a loin of meat and gave false information during an investigation of the matter.

On July 29, 2004, Mr. Larson's job was to trim fat from loins. It was discovered that several cuts had been made deep into a loin. No one witnessed the cuts being made. There were several employees working with knives who had access to the meat. When questioned, Mr. Larson indicated that he had no knowledge as to how the meat was cut and denied that he had even seen the cut loin. One employee, Delbert Schulz, indicated that Mr. Larson had shown him a loin that was cut up. Leonidas Hernandez, another employee, indicated that he had seen an employee pick up a piece of meat and that the person next to him advised him that the meat had been cut. Mr. Hernandez' written statement does not identify Mr. Larson as the individual who picked up the piece of meat.

The employer believed that Mr. Schulz and Mr. Hernandez had seen Mr. Larson holding up the cut piece of meat. It was concluded, therefore, that he had given false information when questioned as to whether he had seen the cut piece of meat. The employer apparently concluded that Mr. Larson had given a false statement because he was the individual responsible for the cuts. He was notified of his discharge on August 2, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Larson 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. Larson was discharged based on allegations that he sabotaged product and gave false information during an investigation. Neither contention has been established to the satisfaction of the administrative law judge.

No one witnessed Mr. Larson, or any other individual, cut the meat. The employer's conclusions were based on three written statements from other employees. One statement indicated that Mr. Larson had denied any knowledge of the cut meat and had not seen it. One statement indicated that Mr. Larson had held up the cut piece of meat and another indicated that an unnamed employee had held up a piece of meat. None of the individuals who wrote the statements were offered as witnesses to be examined and cross-examined. Given this factor, along with Mr. Larson's denials, the administrative law judge accords little weight to the written statements. The evidence failed to establish that Mr. Larson did, in fact, cut the loin and give false information during the employer's investigation.

For the reasons cited herein, the administrative law judge concludes that the employer has failed to satisfy its burden of proof in this matter. While the employer may have had good cause to discharge, conduct which 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 App. 1983). Benefits are allowed.

DECISION:

The representative's decision dated September 3, 2004, reference 02, is hereby affirmed. Mr. Larson was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/