

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

MIRSAD MEMIC
915 W 2ND #2
OTTUMWA IA 52501

EXCEL CORPORATION
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-00275-HT
OC: 11/23/03 R: 03
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, 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
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Excel, filed an appeal from a decision dated January 2, 2004, reference 02. The decision allowed benefits to the claimant, Mirsad Memic. After due notice was issued a hearing was held by telephone conference call on February 23, 2004. The claimant participated on his own behalf and Zeljka acted as interpreter. The employer participated by Human Resources Director Peggy Beeler.

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: Mirsad Memic was employed by Excel from April 30, 2002 until November 20, 2003. He was a full-time production worker.

The claimant received several warnings regarding his work performance. He refused to trim the loins in accordance with the specifications required by the customer. The final warning and three-day suspension was given on November 7, 2003, and the claimant was notified his job was in jeopardy if there were any further incidents.

On November 20, 2003, the claimant was again incorrectly trimming the loins. The supervisor reminded him of the requirements but shortly after that, the claimant was discovered still trimming the loins incorrectly. He was taken to the human resources office where he was notified by Human Resources Director Peggy Beeler and Supervisor John Hall that he was discharged.

Mirsad Memic has received unemployment benefits since filing a claim with an effective date of November 23, 2003.

REASONING AND CONCLUSIONS OF LAW:

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

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had been advised his job was in jeopardy as a result of his refusal to trim the loins in accordance with the required specifications. In spite of the warnings, he continued to trim the loins as he wished, rather than as required. This is conduct not in the best interests of the employer and the claimant is disqualified.

Mr. Memic maintained he was the victim of the supervisor's personal animosity and that is why he received the warnings. However, he acknowledged that at least one other supervisor gave him a warning regarding his failure to trim loins correctly. The administrative law judge therefore does not find his assertion credible. In addition, the claimant stated he was fired because he wanted to leave the loin trim area and work elsewhere. Job transfers at Excel are determined by collective bargaining agreement and seniority, and individual supervisors do not determine who gets which job. The claimant's argument that he was fired because his supervisor did not want him to leave is not only inconsistent but confusing and lacks foundation in the record.

The claimant is disqualified, as he was discharged for willfully refusing to follow the instructions of his supervisor.

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 January 2, 2004, reference 02, is reversed. Mirsad Memic 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 \$3,783.00.

bgh/b