

**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**

**BRENDA K WALTERS
116 – 7TH ST NE #2
MASON CITY IA 50401**

**EXPRESS SERVICES INC
PO BOX 720660
OKLAHOMA CITY OK 73172**

**Appeal Number: 06A-UI-00793-CT
OC: 12/25/05 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:

Express Services, Inc. filed an appeal from a representative's decision dated January 17, 2006, reference 01, which held that no disqualification would be imposed regarding Brenda Walters' separation from employment. After due notice was issued, a hearing was held by telephone on February 7, 2006. Ms. Walters participated personally. The employer participated by Andre Smith, Staffing Consultant.

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: Ms. Walters has been accepting temporary work

assignments through Express Services, Inc. since April of 2001. On July 9, 2005, she was placed in a long-term assignment with Sunny Fresh Foods where she worked full time through December 9.

On December 12, Ms. Walters notified the employer that she would be absent because she had sustained an injury to her back. She continued to keep the employer informed of her status. As of December 16, she had not been released by her doctor to return to work. Ms. Walters was notified on the morning of December 16 that she was being removed from the assignment because of her attendance. She had not received any warnings about her attendance. Ms. Walters was released to return to work on December 20 and was in contact with the employer on December 23 regarding a return to work. The only assignment available on December 23 was work Ms. Walters was physically unable to perform. She filed a claim for job insurance benefits effective December 25, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Walters was separated from employment for any disqualifying reason. She filed a claim for job insurance benefits because she was unemployed due to being discharged from her last assignment. 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). Ms. Walters was discharged because of her attendance. An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Absences that are for reasonable cause and are properly reported are considered excused absences.

The employer's evidence failed to establish that Ms. Walters had an excessive number of unexcused absences. Moreover, she was never warned about her attendance so that she would have an opportunity to try to correct it and save her employment. The evidence failed to establish that Ms. Walters deliberately and intentionally acted in a manner she knew to be contrary to the employer's standards. For the reasons stated herein, it is concluded that misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated January 17, 2006, reference 01, is hereby affirmed. Ms. Walters was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs