

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

CARLOS MENDEZ  
527½ CHURCH #1  
OTTUMWA IA 52501

EXCEL CORPORATION  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-03049-CT  
OC: 02/13/05 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Excel Corporation filed an appeal from a representative's decision dated March 9, 2005, reference 01, which held that no disqualification would be imposed regarding Carlos Mendez' separation from employment. After due notice was issued, a hearing was held by telephone on April 12, 2005. The employer participated by Mindy Ming, Assistant Human Resources Manager. Mr. Mendez did not respond to the notice of hearing.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Mendez began working for Excel on May 1, 2001 as a full-time production worker. In February of 2005, he reported that he had been injured at work. Mr. Mendez was advised that an appointment had been scheduled for him to see a doctor on February 11 regarding his injury. He indicated that he could not attend the appointment because he had something else to do in Des Moines. The doctor's appointment was scheduled to take place during work hours. Mr. Mendez had not requested permission to be absent on the day of the appointment.

Mr. Mendez was advised that a refusal to attend the doctor's appointment could result in his discharge. He continued in his refusal and, therefore, was taken to the human resources office. He was advised that it was important that he follow instructions regarding the appointment. When he still refused to go to the appointment, he was discharged. The employer did not want to try to reschedule the appointment because the doctor's office is busy and appointments are difficult to obtain. The refusal to attend the appointment was the sole reason for Mr. Mendez February 11, 2005 discharge. Pursuant to negotiations between the union and the employer, he returned to work as of March 21, 2005.

Mr. Mendez has received a total of \$1,240.00 in job insurance benefits since filing his claim effective February 13, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Mendez 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. Mendez was discharged after he refused to attend a doctor's appointment as directed by the employer after he reported a work-related injury.

An employer has two substantial reasons for requiring medical attention after a work injury is reported. First, the employer needs to determine if there has, in fact, been an injury for which the employer will be liable. For workers' compensation purposes, it is important to establish the existence and extent of any injury sustained by a worker. Second, the employer needs to know the nature and extent of an employee's injury to ensure that the individual is not assigned work that might aggravate whatever injury exists. An employer has the right to expect that an employee will cooperate with an investigation of an injury reported by that employee. Mr. Mendez breached his obligation to the employer by refusing to attend the doctor's appointment scheduled for him.

An individual's refusal or failure to perform a specific task does not constitute misconduct if such refusal or failure is in good faith or for good cause. Woods v. Iowa Department of Job Service, 327 N.W.2d 768 (Iowa App. 1982). Mr. Mendez told the employer he could not attend the appointment because he had something to do in Des Moines. However, the appointment was during work hours and he had not requested permission to have the time off. Therefore, it was reasonable for the employer to expect him to be available for the appointment. Mr. Mendez did not participate in the hearing to explain what it was he had to do in Des Moines

that prevented him from keeping the appointment. Therefore, the administrative law judge cannot conclude that he had a compelling personal reason for not attending the appointment.

Mr. Mendez' refusal to attend the doctor's appointment constituted a substantial disregard of the employer's interests as it hampered or prevented a full investigation of his reported work injury. For the above reasons, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied. Mr. Mendez has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

**DECISION:**

The representative's decision dated March 9, 2005, reference 01, is hereby reversed. Mr. Mendez was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Mendez has been overpaid \$1,240.00 in job insurance benefits.

cfc/sc