

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

DEB J BRAUN
203 N CHERRY ST
MT PLEASANT IA 52641

ADECCO USA INC
c/o TALX UC EXPRESS
PO BOX 66736
ST LOUIS MO 63156-6736

Appeal Number: 04A-UI-12806-HT
OC: 10/31/04 R: 04
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

STATEMENT OF THE CASE:

The employer, Adecco, filed an appeal from a decision dated November 19, 2004, reference 01. The decision allowed benefits to the claimant, Deb Braun. After due notice was issued a hearing was held by telephone conference call on December 21, 2004. The claimant participated on her own behalf. The employer participated by Office Supervisor Christy Ball and was represented by UC Express in the person of David Williams.

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: Deb Braun was employed by Adecco from November 21, 2003 until May 19, 2004.

She had been assigned to Celestica until April 22, 2004, when the client requested her removal because of absenteeism. She was scheduled to work at Nypro on May 1, 2004, but her daughter called in to report she would not be at work because she was in the hospital. Nypro requested Ms. Braun not to return as she missed her first scheduled day of work. When Office Supervisor Christy Ball talked to the claimant on May 4, 2004, she asked her to bring in documentation of her hospitalization and she would try to have Nypro reinstate her. However, Ms. Braun never brought in any documentation, and did not contact Ms. Ball again.

On May 19, 2004, the claimant called the Cedar Rapids, Iowa, office and spoke to Allison who had originally placed her at Celestica. Ms. Braun became obstreperous and confrontational to personnel in the Cedar Rapids office and in the Ft. Madison office. She felt her removal from Celestica had been "personal" and would not accept anyone's statements that it was because of attendance.

The incidents were reported to Ms. Ball who placed the claimant on "inactive for cause" status. This is not a permanent separation, but that determination would wait until the claimant called back for another assignment and whether she could be successfully counseled about her conduct.

Deb Braun has received unemployment benefits since filing a claim with an effective date of October 31, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she 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).

871 IAC 24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The employer does not consider the claimant to have been discharged, but is "inactive for cause." This appears to be a form of disciplinary suspension pending the claimant's willingness to return to work and be counseled regarding her conduct toward other staff members. The suspension was the result of aggressive conduct toward other employees. The claimant refused to accept any personal responsibility for the ending of her assignment at Celestica and verbally abused others. This is conduct not in the best interests of the employer and the claimant is disqualified.

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 she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of November 19, 2004, reference 01, is reversed. Deb Braun is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$1,589.00.

bgh/smc