

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

DANIEL A MALLONEE
1324 E 4TH
OTTUMWA IA 52501

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

Appeal Number: 04A-UI-06621-HT
OC: 05/16/04 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

STATEMENT OF THE CASE:

The employer, Excel, filed an appeal from a decision dated June 3, 2004, reference 01. The decision allowed benefits to the claimant, Daniel Mallonee. After due notice was issued a hearing was held by telephone conference call on July 12, 2004. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Human Resources Assistant Adriana Cobos and General Foreman Jim Greer.

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: Daniel Mallonee was employed by Excel from April 5 until May 11, 2004. He was a full-time production worker on the picnic line.

The supervisors had observed a lot of meat falling on the floor in the picnic area. This requires special treatment for the meat to be "reconditioned." It was unknown who was responsible so on the morning of May 11, 2004, every individual on the line was talked to separately by the supervisors about this problem. Everyone, including the claimant, was told to handle the meat in such a way as to assure it would not fall on the floor. They were advised that failure to properly handle the meat could result in disciplinary action.

Later in the shift, Mr. Mallonee was observed throwing a piece of meat approximately 15 feet into a sink. He could have handed the meat to the person across the line who would have been able to turn and place the meat in the sink without having to throw it. Because of the distance the claimant threw the meat, and the fact he threw it overhand with some velocity, it bounced out of the sink and landed on the floor. Mr. Mallonee was a probationary employee he was discharged immediately for violation of a known policy.

Daniel Mallonee filed a claim for unemployment benefits with an effective date of May 16, 2004. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

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, along with everyone else on the line, for failure to properly handle the meat so it did not fall on the floor. In spite of the warning, Mr. Mallonee threw the meat at a sink, over such a long distance and with such force, that it bounced out. There was no need for him to use this technique as he could have handed the meat across the line to another employee, who could have safely put it in the sink. This was not only mishandling company property, but created more time and expense for the employer to recondition it. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of June 3, 2004, reference 01, is reversed. Daniel Mallonee is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/smc