

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

OSCAR A VILLALOBOS  
230½ N WELLER ST  
OTTUMWA IA 52501

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

Appeal Number: 04A-UI-02712-DWT  
OC 02/01/04 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, 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 are 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 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Excel Corporation (employer) appealed a representative's March 1, 2004 decision (reference 01) that concluded Oscar A. Villalobos (claimant) was qualified to receive unemployment insurance benefits, and the employer's account would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 7, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Nick Statler, a human resource representative, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

## ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

## FINDINGS OF FACT:

The claimant started working for the employer on February 17, 2003. The claimant worked as a full-time production employee on the first shift. The employer's no-fault attendance policy informed employees they could be discharged if they accumulated ten or more attendance points in a rolling calendar year.

On July 29, 2003 the claimant received a warning from the employer that he had accumulated 5 attendance points since March 6, 2003. On October 20, the claimant received a notice he had accumulated 8.0 or 8.5 attendance points since March 2003. On October 24, 2003, the claimant called in and reported he was ill and unable to work. The employer gave him a notice on October 27, that he had accumulated 9.5 attendance points. The notice warned the claimant he could be discharged if accumulated 10 points before March 6, 2004.

The claimant did not report to work or notify the employer he was unable to work as scheduled on February 2, 2004. On February 4, 2004, the employer discharged the claimant for violating the employer's attendance by accumulating 10.5 points in less than a year.

The claimant established a claim for benefits during the week of February 1, 2004. He filed claims for the weeks ending February 7 through March 6, 2004. He received his maximum weekly benefit amount of \$228.00 during each of these weeks.

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

As of October 27, 2003, the claimant knew or should have known his job was in jeopardy if he accumulated any more attendance points. On February 2, 2004, the claimant failed to properly notify the employer he was unable to work. Since the claimant did not participate in the hearing, the facts do not indicate why he did not report to work on February 2, 2004. A preponderance of the evidence indicates the claimant intentionally failed to work on February 2. The facts do not indicate the claimant's absence would be excused on February 2. Therefore,

the employer established the claimant was discharged for work-connected misconduct. As of February 1, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending February 7 through March 6, 2004. He has been overpaid a total of \$1,140.00 in benefits he received for these weeks.

**DECISION:**

The representative's March 1, 2004 decision (reference 01) is reversed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 1, 2004. This disqualification continues until he has been paid 10 times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending February 7 through March 6, 2004. He has been overpaid a total of \$1,140.00 in benefits he received for these weeks.

dlw/b