

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

MICKY L RAMMAGE
808 W 2ND ST
OTTUMWA IA 52501

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

Appeal Number: 05A-UI-02593-CT
OC: 02/06/05 R: 03
Claimant: Appellant (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:

Micky Rammage filed an appeal from a representative's decision dated March 7, 2005, reference 01, which denied benefits based on his separation from Excel Corporation. After due notice was issued, a hearing was held by telephone on March 30, 2005. Mr. Rammage participated personally and offered additional testimony from Jody Robbins. The employer participated by Tonya Teeter, Human Resources Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Rammage was employed by Excel Corporation from October 20, 2003 until February 4, 2005 as a full-time production worker.

On February 4, 2005, another employee, Octavio, with more seniority than Mr. Rammage complained that Mr. Rammage's job was easier than his. Octavio apparently complained to management and Mr. Rammage was then reassigned to a different task. Mr. Rammage stated to the supervisor that he was only being reassigned because his "bitch" told him to. Later, Mr. Rammage stated to another coworker that, if he got into trouble, there would be trouble in the parking lot that night as he was going to kick Octavio's ass. The statement was relayed to management and, as a result, Mr. Rammage was discharged.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Rammage 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). The decision to discharge Mr. Rammage was based on his threat to beat up Octavio. Although he had received other warnings during the course of his employment, the administrative law judge finds the February 4 threat to be sufficient to establish disqualifying misconduct.

The employer had the right to expect a violence-free workplace. Mr. Rammage threatened physical harm to a coworker because he felt the coworker may have gotten him into trouble. It is true that the threat was not made directly to Octavio. Abusive name-calling may constitute misconduct even if the target of the abuse is not present when the abusive name-calling occurs. Myers v. Employment Appeal Board, 462 N.W.2d 734 (Iowa App 1990). The same rationale is appropriate in situations involving a threat rather than name-calling. Mr. Rammage's conduct in threatening violence in the workplace constituted a substantial disregard of the standards an employer has the right to expect. For the above reasons, benefits are denied.

DECISION:

The representative's decision dated March 7, 2005, reference 01, is hereby affirmed. Mr. Rammage 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.

cfc/sc