

**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**

**BRENDA K PILCHER
3100 – 16TH AVE SW #161
CEDAR RAPIDS IA 52404-1452**

**EXPRESS SERVICES INC
PO BOX 720660
OKLAHOMA CITY OK 73172**

**Appeal Number: 06A-UI-02746-CT
OC: 02/05/06 R: 03
Claimant: Respondent (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:

Express Services, Inc. filed an appeal from a representative's decision dated February 28, 2006, reference 01, which held that no disqualification would be imposed regarding Brenda Pilcher's separation from employment. After due notice was issued, a hearing was held by telephone on March 29, 2006. Ms. Pilcher participated personally. The employer participated by Heather Wickman, Staffing Specialist.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Pilcher began working for Express Services, Inc.

on February 21, 2005 and was assigned to work full time for Adidas. On or about February 1, 2006, the employer received a complaint from an individual who had worked with Ms. Pilcher at Adidas. The individual, Holly Pearson, indicated that Ms. Pilcher had become involved in a conversation in which Ms. Pearson was being reprimanded by a supervisor. Ms. Pearson indicated that Ms. Pilcher began telling her how to perform her job. As a result of the complaint, Ms. Pilcher was discharged on February 2, 2006.

The only prior disciplinary action against Ms. Pilcher was on June 23, 2005 when she was involved in an argument with a coworker. The above matters were the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Pilcher 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). Before a disqualification may be imposed, the evidence must establish that the final conduct that caused the discharge constituted misconduct within the meaning of the law. See 871 IAC 24.32(8). The employer's evidence regarding the incident with Ms. Pearson failed to establish an act of misconduct. Even if Ms. Pilcher had interjected herself into the conversation in which Ms. Pearson was being reprimanded, her conduct did not evince a willful or wanton disregard of the employer's interests or standards. She was simply telling a coworker how the job should be performed. There was no competent evidence that she did so in a humiliating or abusive fashion.

The employer's evidence failed to establish that the discharge was based on an act of misconduct. Although Ms. Pilcher was involved in an argument with a coworker in June of 2005, conduct on that date would not be a current act in relation to the February 2, 2006 discharge date. For the reasons stated herein, the administrative law judge concludes that the employer has failed to establish that Ms. Pilcher should be disqualified from receiving job insurance benefits.

DECISION:

The representative's decision dated February 28, 2006, reference 01, is hereby affirmed. Ms. Pilcher was separated from employment for no disqualifying reason. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/tjc