

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

ROSALINDA ALBERTO
1221 N JEFFERSON
MASON CITY IA 50401

EXPRESS SERVICES INC
PO BOX 720660
OKLAHOMA CITY OK 73172

Appeal Number: 06A-UI-04951-DWT
OC: 04/16/06 R: 02
Claimant: Appellant (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:

Rosalinda Alberto (claimant) appealed a representative's May 5, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Express Services, Inc. (employer) 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 May 24, 2006. The claimant participated in the hearing. Andre Smith, a staffing consultant, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on May 1, 2002. Most recently the claimant started a job assignment on October 5, 2005. The claimant worked second shift.

The claimant was absent from work on April 3, 7, 9, 10, 11, 13 and 14, but the claimant was on vacation April 7 through 17. On April 19, the claimant contacted the employer to report she was unable to work because her son was ill. The employer told the claimant that the client she worked for was going to be laying some employees off from work so she needed to watch her attendance.

On April 20, after the claimant asked for April 27 off to take her son to a doctor's appointment, the client requested that the claimant be taken off the assignment. The employer still considered the claimant eligible to be assigned to other clients. The claimant asked the employer for another assignment, but the employer has not had any other work to assign to the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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 facts do not establish that the claimant committed work-connected misconduct. The employer's client has the right for any number of business reasons to ask that the employer remove a person from an assignment. Even though the employer's client asked that the claimant be removed from the assignment, the employer still considered the claimant eligible to assign to other jobs. The facts do not establish the claimant committed work-connected misconduct. As of April 16, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 5, 2006 decision (reference 01) is reversed. The claimant's job assignment ended because a business client no longer wanted or needed the claimant's services. Even though the business client no longer needed the claimant's service, the employer still considered the claimant eligible to be assigned to other jobs. Since the claimant did not commit work-connected misconduct, as of April 16, 2006, she is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kkf