

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

VERONICA M NATERA
3006 E PORTER AVE
DES MOINES IA 50320

HOME DEPOT USA INC
c/o TALX UCM SERVICES
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-07347-HT
OC: 06/19/05 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:

The claimant, Veronica Natera, filed an appeal from a decision dated July 14, 2005, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 3, 2005. The claimant participated on her own behalf. The employer, Home Depot, did not provide a telephone number where a representative could be contacted and did not participate.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Veronica Natera was employed by Home Depot from

April 26, 1999 until June 16, 2005. She was a part-time phone center associate working 16 hours per week.

On April 20, 2005, she told her supervisor she needed time off because she had made arrangements to admit herself to an outpatient program for her alcoholism. The supervisor said she would remove the claimant from the schedule but if she needed "more than six weeks" she would need to talk to human resources.

Ms. Natera began the outpatient program on April 28, 2005, but did not attend for more than a few days due to a relapse. The next contact she had with the employer is when she called Mike in human resources on May 4, 2005. At that time she was in Chicago because her grandmother had had a heart attack. The claimant was not caring for her grandmother, merely visiting her in the hospital and visiting with other relatives.

The claimant did not contact the employer again until she returned from Chicago on June 5, 2005. At that time she talked with the store manager who had her fill out a request form so she could use her vacation to cover some of her absence. The vacation was insufficient to cover the entire time she was gone from April 20 to June 5, 2005. On June 16, 2005, she received notification in the mail she was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant was discharged by the employer for missing too much work. However, the claimant has established she made some effort to notify the employer of her status, both in the rehabilitation program and when she took time off to visit her grandmother and other family members in Chicago. When she notified the human resources person that she had relapsed and was in Chicago, nothing was said that she must either return to work or the rehab program, or that she would not be excused from work.

The employer has failed to establish any grounds for the discharge and has not met its burden of proof to show misconduct.

DECISION:

The representative's decision of July 14, 2005, reference 01, is reversed. Veronica Natera is qualified for benefits provided she is otherwise eligible.

bgh/kjw