

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

FELIX RUIZ  
16640 HWY 34 LOT 64  
OTTUMWA IA 52501

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

Appeal Number: 05A-UI-02901-CT  
OC: 02/06/05 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 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Excel Corporation filed an appeal from a representative's decision dated March 4, 2005, reference 01, which held that no disqualification would be imposed regarding Felix Ruiz' separation from employment. After due notice was issued, a hearing was held by telephone on April 11, 2005. Mr. Ruiz participated personally. The employer participated by Tonya Teeter, Human Resources Manager. Rosie Paramo Ricoy participated as the interpreter.

#### 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. Ruiz was employed by Excel from July 5, 2000 until February 8, 2005 as a full-time production worker. Beginning in early December of 2004, he asked his supervisor if he could have two weeks off to go to Mexico. Permission was denied because of prior requests from other employees. He was told he could not have time off until February of 2005. Mr. Ruiz did not go over the supervisor to request time off.

Mr. Ruiz left a voice mail message for the employer on December 30 indicating that he was going to Mexico because of an emergency and would be gone for two weeks. His tickets had been purchased on or about December 29. He was absent from work from January 3 through 14. He returned to work on January 18 and was notified of his discharge on January 21. Mr. Ruiz told the employer that, because he had gone to Mexico to visit his sick father, he felt the absences should be covered by the Family and Medical Leave Act (FMLA). Therefore, the discharge decision was delayed pending receipt of his FMLA application. The doctor's statement in support of the FMLA indicated that Mr. Ruiz' father suffered from an eye condition that requires treatment every three to four months. His father has glaucoma. The employer did not feel the doctor's statement was sufficient to establish eligibility for FMLA and, therefore, the discharge decision stood. The effective date of the discharge was February 8, 2005.

Mr. Ruiz has received a total of \$3,135.00 in job insurance benefits since filing his claim effective February 6, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Ruiz 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). Mr. Ruiz was discharged after he was absent from work for two weeks. He knew that permission to have the time off had not been granted. In spite of this, he made arrangements to travel to Mexico. Mr. Ruiz has failed to establish that there was an emergency which required him to leave when he did. His father suffers from glaucoma and receives treatment every three to four months. His eye condition is not life-threatening. Mr. Ruiz did not establish that his father had any other medical condition that constituted an emergency which required him to leave work in spite of not having permission to do so.

The employer retains the right to determine when employees will be granted time off. Mr. Ruiz took two weeks off after being denied permission to have the time off. The employer cannot operate its business efficiently if employees are allowed to take extended periods of time off whenever they choose without permission from management. As stated previously herein, there was no emergency which required Mr. Ruiz to leave when he did rather than waiting until February when he would have permission to go. His decision to leave after permission to be gone was denied constituted a substantial disregard of the standards the employer had the right to expect. It is concluded, therefore, that disqualifying misconduct has been established by the evidence.

The administrative law judge has considered whether the provisions of Iowa Code section 96.5(1)f are applicable to the facts of this case. In order to qualify for benefits under this section of law, the administrative law judge would have to find that Mr. Ruiz left for compelling personal reasons. Having found that there was no emergency which required him to leave work, the administrative law judge concludes that his father's health did not present a compelling personal reason for being away from work.

For the reasons stated herein, the administrative law judge concludes that Mr. Ruiz is not entitled to job insurance benefits. He has received benefits since filing his claim effective February 6, 2005. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

**DECISION:**

The representative's decision dated March 4, 2005, reference 01, is hereby reversed. Mr. Ruiz 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. Mr. Ruiz has been overpaid \$3,135.00 in job insurance benefits.

cfc/pjs