

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

HECTOR BRASERO
107 TAFT CIRCLE #3
OTTUMWA IA 52501

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

Appeal Number: 04A-UI-12524-DWT
OC: 10/24/04 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 are 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:

Excel Corporation (employer) appealed a representative's November 10, 2004 decision (reference 01) that concluded Hector Brasero (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 16, 2004. The claimant participated in the hearing. Rosie Paramo-Ricoy interpreted during the hearing. Adrianna Cobos, a human resource assistant, 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 December 1, 2003. He worked full time. The claimant received a copy of the employer's attendance policy. The employer's attendance policy informs employees that if within a year, the employee accumulates ten attendance points, the employer will discharge the employee. The employer assesses a point even when an employee properly notifies the employer he is unable to work as scheduled because he is ill and has a doctor's statement confirming the illness.

On August 24, 2004, the employer had assessed the claimant ten attendance points. Even though the claimant did not agree that he had accumulated as many points as the employer asserted, he signed a last-chance agreement so he could continue working. The last-chance agreement indicated the claimant could not accumulate any more attendance points until January 30, 2005.

The employer's records indicate the claimant did not report to work on August 25 and 26. The employer did not discharge the claimant. The claimant continued working until his father passed away in late September. The claimant went to Puerto Rico for two weeks to take care of his father's funeral arrangements. When the claimant returned to work on October 7, he gave his father's obituary to the employer. The employer did not say anything to the claimant.

On October 19, 20 and 21, the claimant properly notified the employer he was ill and unable to work as scheduled. When the claimant reported to work on October 22, he gave the employer a doctor's statement verifying he had been ill and unable to work these days.

Based on the condition in the last-chance agreement, the employer discharged the claimant for excessive absenteeism. The employer discharged the claimant on October 23, 2004.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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 law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew or should have known his job was in jeopardy when he signed the last-chance agreement in late August 2004. The employer's testimony that the claimant did not report to work anytime after August 24 is not credible. The claimant's testimony about the days he worked and the days he was absent from work in September and October is reflected in the findings of fact.

After signing the last-chance agreement on August 24, the claimant violated the agreement when his father passed away and when he was ill and unable to work as scheduled. Even though the employer may have had compelling business reasons for discharging the claimant, the evidence does not establish that the claimant committed a current act of work-connected misconduct. The claimant's most recent absences were beyond his control. He properly notified the employer and confirmed he was unable to work when he gave the employer a doctor's statement for the three days he was ill and unable to work. The claimant did not commit work-connected misconduct. Therefore, as October 24, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's November 10, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 24, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b