

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

MITCHELL L PORRETTO
117 S FELLOW
OTTUMWA IA 52501

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

Appeal Number: 05A-UI-05016-CT
OC: 04/10/05 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, 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
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Excel Corporation filed an appeal from a representative's decision dated April 29, 2005, reference 01, which held that no disqualification would be imposed regarding Mitchell Porretto's separation from employment. After due notice was issued, a hearing was held by telephone on June 15, 2005. The employer participated by Mindy Ming, Assistant Human Resources Manager. Mr. Porretto responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Porretto was employed by Excel from January 5, 2004, until April 14, 2005, as a full-time production worker. He was discharged from the employment.

The final incident that caused the discharge occurred on April 14, 2005, when Mr. Porretto was advised by the United States Department of Agriculture (USDA) inspector that he was not trimming sufficient fat and hair from a carcass. The problems were pointed out to him but he refused to make the changes as directed. The failure to re-trim the carcasses caused the production line to be shut down. As a result, Mr. Porretto was discharged the same day. In making the decision to discharge, the employer also considered the fact that he had received a written warning on December 20, 2004 for using abusive language towards a cashier in the cafeteria. He was upset that the cashier would not accept his large bill and began swearing at the cashier. Mr. Porretto also received a written warning on August 6, 2004 for making an obscene gesture. He had taken the pig's tail from a carcass and was holding it in the area of his genitals.

Mr. Porretto has received a total of \$2,576.00 in job insurance benefits since filing his claim effective April 10, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Porretto 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. Porretto's discharge was triggered by the fact that he refused to perform his job as directed on April 14. He knew he was required to follow USDA requirements but refused to obey the USDA inspector's directive that he trim additional hair and fat from a carcass. His conduct had the effect of stopping production. Conduct that slows or impedes production is clearly contrary to an employer's expectations.

The administrative law judge concludes that Mr. Porretto's refusal to abide by the USDA inspector's directives constituted a substantial disregard of the employer's interests and is, therefore, disqualifying misconduct within the meaning of the law. Accordingly, benefits are denied. Mr. Porretto has received benefits since filing his claim. 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 April 29, 2005, reference 01, is hereby reversed. Mr. Porretto was discharged by Excel 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. Porretto has been overpaid \$2,576.00 in job insurance benefits.

cfc/kjw