

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

CHRISTOPHER J RANDALL
1202 N CASTLE
OTTUMWA IA 52501

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

Appeal Number: 04A-UI-11969-JTT
OC: 10/03/04 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 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

STATEMENT OF THE CASE:

Excel Corporation filed an appeal from a decision of a representative dated October 22, 2004, reference 01, which had concluded that the claimant, Christopher Randall, was eligible to receive unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on November 30, 2004. The claimant participated personally. The employer participated by Adrianna Cobos, Excel Human Resources Associate.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, makes the following findings of fact: The employer, Excel Corporation, is a hog processing operation. Mr. Randall worked full-time for Excel as a production line worker from July 22, 2002 to October 5, 2004. Mr. Randall worked the second shift, 3:00 p.m. to 11:30 p.m., as a general laborer and was moved from one area of the production line to another as needed. For at least five days prior to discharge, Mr. Randall "turned bellies" on the production line. This work required repetitive motion. Mr. Randall's prior assignments on the production line also required repetitive motion. Mr. Randall's immediate supervisor was Nathan Marriot.

On October 5, 2004, Excel management placed Mr. Randall on "indefinite suspension," and on October 7, 2004, Mr. Randall was formally discharged. Excel's stated reason for terminating Mr. Randall was based on its allegation that Mr. Randall engaged in misconduct in violation of company policy by misrepresenting the cause of an injury when he consulted with the company nurse on October 5, 2004.

On October 5, 2004 at approximately 4:12 p.m., Mr. Randall reported to the nurse's station at the plant for an injury to his right shoulder and hand. The nurse with whom he had contact was Lisa Ramirez. Mr. Randall advised Nurse Ramirez that he felt tingling in his right shoulder and right hand. Mr. Randall advised Nurse Ramirez that he thought the tingling could be caused by a blood draw from his shoulder during a doctor's appointment earlier in the day or from the repetitive motions required of him as he "turned bellies" on the production line, or by both the repetitive motion and the blood draw. Nurse Ramirez advised Mr. Randall that she did not believe his injury was caused by repetitive motion on the production line. Nonetheless, Nurse Ramirez wrapped Mr. Randall's hand and gave him 200 milligrams of ibuprofen. Mr. Randall then returned to the production line.

Mr. Randall's consultation with Nurse Ramirez lasted approximately 15 to 20 minutes. Nurse Ramirez followed her normal practice of documenting the consultation. The documentation did not contain any reference to the blood draw earlier in the day as a possible cause of the Mr. Randall's injury. Nurse Ramirez provided Mr. Randall with a copy of the documentation and forwarded a copy of the documentation to Mr. Randall's immediate supervisor, Nathan Marriot.

At approximately 6:20 p.m., Mr. Randall was summoned to Mr. Marriot's office. This meeting lasted approximately ten minutes. Mr. Marriot asked Mr. Randall what had happened to his hand and Mr. Randall provided the same information he had provided to Nurse Ramirez. Mr. Randall then returned to the production line.

Later in the evening, at approximately, 8:00 to 9:00 p.m., Mr. Randall was summoned to the processing plant's main office. Present for this meeting were Mr. Randall and Mr. Marriot, as well as Christopher Sheehan, the second shift supervisor for the entire plant; David Rice, assistant plant supervisor for the second shift; and Mike Larkin, a union steward. At this time, Mr. Marriot advised Mr. Randall that he was being placed on indefinite suspension due to an Employee Safety Injury (ESI) violation. The employer alleged that Mr. Randall had misrepresented the cause of his injury at the time he consulted with Nurse Ramirez. Mr. Randall was further advised that the company would review the matter and get back to him. On October 7, 2004, Mr. Randall received a letter from Excel advising him that Excel was discharging him.

Mr. Randall applied for and unemployment insurance benefits and has received benefits since the benefit week that ended October 9, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether the Mr. Randall was discharged for misconduct. Under Iowa Code section 96.5(2)(a), Mr. Randall would be disqualified for unemployment insurance benefits if he was discharged for misconduct in connection with his employment. Iowa Workforce Development rules define misconduct 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.” The applicable rule further limits the definition of misconduct to “conduct evincing such willful or wanton disregard of the 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.” 871 IAC 24.32-1-a. Both Excel and Mr. Randall characterize Mr. Randall’s separation from employment as a termination or discharge preceded by an indefinite suspension. Under Workforce development rules, a disciplinary suspension is considered a discharge. See 871 IAC 24.32-9.

Because Mr. Randall was discharged, Excel bears the burden of proving that Mr. Randall is disqualified from receiving unemployment insurance benefits due to being discharged for misconduct. Iowa Code section 96.6(2). Under Workforce Development rules and pursuant to the Supreme Court of Iowa, an allegation of misconduct or dishonesty without corroboration is not sufficient to result in disqualification. 871 IAC 24.32(9); Cosper vs. IDJS, 321 N.W.2d 6, 11 (Iowa 1982).

Excel’s representative and only witness at the hearing was Excel Human Resources Associate, Ms. Adrianna Cobos. Ms. Cobos’ testimony consisted almost entirely of reading from statements written by Nurse Ramirez and the Excel management team on October 5, 2004. Unfortunately, Excel did not provide the administrative law judge with copies of these written statements or the written statement allegedly written by Mr. Randall. Mr. Randall denied writing a statement. Ms. Cobos testified that she herself was not present for any of the meetings involving Mr. Randall and played no role in the investigation of Mr. Randall’s alleged misconduct. It was not clear that Ms. Cobos had even discussed the alleged misconduct with the Excel managers involved in the investigation and subsequent termination of Mr. Randall. Ms. Cobos further testified that she had only been with Excel for nine months and, therefore, had played no role in Mr. Randall’s hiring, orientation, or training. Ms. Cobos testified to the existence of company rule regarding employee dishonesty or misrepresentations that is contained in a handbook routinely provided to employees. The company rules set forth that the penalty for dishonesty or misrepresentations is termination. However, upon inquiry by the administrative law judge, Ms. Cobos testified that she could not confirm that Mr. Randall had ever seen the handbook or acknowledged receipt of a copy. When asked whether Excel had in its possession a signed acknowledgement of receipt of the handbook executed by Mr. Randall, Ms. Cobos advised she did not have one.

At the hearing, the administrative law judge was denied the opportunity to weigh the credibility of Nurse Ramirez or any of the Excel management team who apparently wrote statements at the time of the investigation into Mr. Randall’s alleged misconduct. Likewise, the administrative law judge was denied the opportunity to consider consistencies or inconsistencies in the testimony of Nurse Ramirez and the Excel management team, or to compare that testimony to the sworn testimony offered by Mr. Randall. The administrative law judge cannot assume the

veracity of the Excel statements, especially in light of the employer's interest in limiting its liability with regard to workers injured on the job.

The administrative law judge must conclude that Excel has failed to sufficiently corroborate the allegation of misconduct. Excel's attempt to corroborate the allegation of misconduct was limited to hearsay within hearsay, i.e. the hearsay testimony of Ms. Cobos to the written statements of the Excel's nurse and management team. The administrative law judge must also conclude that Excel has failed to meet its burden of proving that Mr. Randall engaged in misconduct and should, therefore, be disqualified from receiving unemployment insurance benefits.

DECISION:

The decision of the representative dated October 22, 2004, reference 01, is affirmed. The claimant is eligible to receive unemployment insurance benefits, provided the claimant meets all other eligibility requirements.

jt\tjc