

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

VILMA R ALARCON-AVILES
321 N WASHINGTON #8
OTTUMWA IA 52501

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

Appeal Number: 04A-UI-01221-AT
OC: 01/04/04 R: 03
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 96.5-1-c – Resignation to care for family member

STATEMENT OF THE CASE:

Vilma R. Alarcon-Aviles filed a timely appeal from an unemployment insurance decision dated February 2, 2004, reference 01, which disqualified her for benefits. After due notice was issued, a telephone hearing was held on February 25, 2004 with Ms. Alarcon-Aviles participating. Although the employer, Excel Corporation, provided the name and telephone number of a witness, the number was answered by a recording at the time of the hearing. There was no contact from the employer while the hearing was in progress.

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: Vilma R. Alarcon-Aviles was employed by Excel Corporation from May 19, 2003 until she resigned on or about December 11, 2003. Ms. Alarcon-Aviles left employment to return to El Salvador to care for her mother who was suffering from cancer. She returned to Iowa on or about January 2, 2004 and immediately contacted Excel. The company has not offered reemployment to her. She has filed a claim for unemployment insurance benefits effective January 4, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant's separation from employment was a disqualifying event. It was not.

Iowa Code Section 96.5-1-c provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

The evidence in this record establishes that Ms. Alarcon-Aviles has met the requirements of the statute by leaving work for the sole and necessary purpose of caring for her mother who was ill with cancer and by returning to the employer as soon as her services were no longer needed. Under these circumstances, no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated February 2, 2004, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

kjf/b