

**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**

**JOSEPH M HARLAN
130 COLLEGE DR
FOREST CITY IA 50436**

**EXPRESS SERVICES INC
PO BOX 720660
OKLAHOMA CITY OK 73172**

**Appeal Number: 04A-UI-09852-CT
OC: 08/08/04 R: 02
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

STATEMENT OF THE CASE:

Express Services, Inc. filed an appeal from a representative's decision dated September 7, 2004, reference 05, which held that no disqualification would be imposed regarding Joseph Harlan's separation from employment. After due notice was issued, a hearing was held by telephone on October 5, 2004. The employer participated by Andre Smith, Staffing Consultant. On or about October 6, Mr. Harlan contacted the administrative law judge to advise that he had just received his hearing notice as it had to be forwarded to him. He had notified Workforce Development of an address change on September 16 after the hearing notice had been mailed on September 14. Based on his untimely receipt of the hearing notice, the administrative law judge decided to reopen the hearing record.

Due notice was issued rescheduling the matter for a telephone hearing to be held on October 27, 2004. The employer provided a telephone number from which to participate in the hearing. Mr. Harlan did not respond to the notice of hearing. Inasmuch as the employer had already provided testimony during the October 5 hearing and inasmuch as Mr. Harlan did not respond to the notice of hearing, no hearing was held on October 27, 2004.

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. Harlan began working for Express Services, Inc. in June 2003. His last assignment was with Curries where he began working on June 28, 2004. Before placement in the assignment, Mr. Harlan was advised that he was being given one last chance to work for Express Services, Inc. The admonishment was based on problems with Mr. Harlan on prior assignments.

Mr. Harlan was discharged on July 30, 2004 after he was absent without notice on July 29, 2004. He had been verbally warned about his attendance on January 20, 2004 during a prior assignment. Mr. Harlan was discharged on July 30, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Harlan 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. Harlan was discharged because of his absence of July 29, 2004. The absence is unexcused as it was not properly reported. It is true that Mr. Harlan had only the one unexcused absence during his assignment with Curries. However, he had been verbally warned about his attendance during a prior assignment. Moreover, he knew he was being given a last chance by being placed in further work on June 28, 2004. Mr. Harlan's failure to give notice of his July 29 absence constituted a substantial disregard of the standards he knew were expected of him during his "last chance." For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established and benefits are denied.

No overpayment results from this reversal of the prior allowance as Mr. Harlan has not been paid benefits on his claim filed effective August 8, 2004.

DECISION:

The representative's decision dated September 7, 2004, reference 05, is hereby reversed. Mr. Harlan 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.

cfc/kjf