

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

PATRICIA J PIECZYNSKI  
PO BOX 147  
CHARLOTTE IA 52731

CUSTOM-PAK INC  
86 – 16<sup>TH</sup> AVE N  
CLINTON IA 52732

Appeal Number: 04A-UI-08504-CT  
OC: 07/11/04 R: 04  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Custom-Pak, Inc. filed an appeal from a representative's decision dated August 2, 2004, reference 01, which held that no disqualification would be imposed regarding Patricia Pieczynski's separation from employment. After due notice was issued, a hearing was held by telephone on September 2, 2004. Ms. Pieczynski participated personally. The employer participated by Andrea Lawrence, Human Resources Coordinator.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Pieczynski was employed by Custom-Pak, Inc. from

May 29, 1989 until July 9, 2004 as a full-time machine operator. She was discharged because of her attendance. An individual is subject to discharge if she accumulates seven or more attendance infractions during any rolling six-month period.

Ms. Pieczynski was absent due to illness from February 3 through 6, 2004 and provided medical documentation of the need to be absent. She was also absent due to illness on February 10. Ms. Pieczynski did not give a reason for her absence of March 11. She stated personal business as the reason for being absent on March 23. She was off work from April 6 through 8 and returned to work with a doctor's excuse. She cited personal business as the reason for the absence of May 25 and illness as the reason for the absence of June 7. Ms. Pieczynski's final absence was on July 12 when she missed work because her daughter failed to return her car in time for her to report for her 11:00 p.m. shift. Ms. Pieczynski was notified of her discharge on July 13. She had not received any warnings regarding her attendance for over one year. Others in her department had received written warnings regarding attendance in the weeks preceding Ms. Pieczynski's discharge. Attendance was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Pieczynski 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 in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences.

Three of the infractions which resulted in Ms. Pieczynski's discharge were for personal business. Absences due to personal matters are not considered excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The absences caused by illness are excused as they were for reasonable cause and were properly reported. It was Ms. Pieczynski's responsibility to keep track of her attendance infractions or to contact the appropriate persons to obtain this information. However, others in her department were given written warnings to apprise them that they were in jeopardy of losing their employment because of attendance. In fact, Ms. Pieczynski had received such a warning in the past. She was not given the same benefit of warnings as her coworkers had received during the period immediately preceding her discharge. Given this factor, the administrative law judge concludes that Ms. Pieczynski was not given a fair opportunity to correct her attendance and thereby salvage her employment. It is concluded, therefore, that her three unexcused absences are not sufficient to establish a deliberate and intentional disregard of the employer's standards and interests.

While the employer may have had good cause to discharge Ms. Pieczynski, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated August 2, 2004, reference 01, is hereby affirmed. Ms. Pieczynski was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs