

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

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DES MOINES IA 50317

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

Appeal Number: 04A-UI-03101-CT  
OC: 02/15/04 R: 02  
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:

Interstate Brands Corporation (IBC) filed an appeal from a representative's decision dated March 15, 2004, reference 01, which held that no disqualification would be imposed regarding Erica Ploessel's separation from employment. After due notice was issued, a hearing was held by telephone on April 13, 2004. The employer participated by Kelly Green, Human Resources Assistant. Ms. Ploessel did not respond to the notice of 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: Ms. Ploessel was employed by IBC from October 16, 2002

until February 25, 2004. She was last employed full time as a merchandiser, which involved stocking fresh and removing dated product on shelves in retail stores. She was discharged from the employment because of her attendance. An individual is subject to discharge if she accumulates five or more absences within a six-month period.

Ms. Ploessel was absent November 21, December 12, and December 20, 2003 and January 1, and January 22, 2004. The absence of January 22 was due to illness but the reasons for the remaining absences are unknown. All of the absences were properly reported except that of January 1, when Ms. Ploessel had a friend call after the start of the shift to report her absence. Ms. Ploessel received written warnings about her attendance on December 26, 2003 and January 1 and January 24, 2004. She was placed on suspension on January 24, 2004, pending a further determination and was notified of her discharge on February 25, 2004. Attendance was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Ploessel 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.

Ms. Ploessel's absence of January 1, 2004 is considered unexcused because it was not timely reported. The absence of January 22, 2004 is considered excused as it was for reasonable cause, illness, and was properly reported. The reasons for the remaining absences are unknown. Without knowing the reason for an absence, the administrative law judge cannot conclude that it should be unexcused. Ms. Ploessel's one unexcused absence of January 1 is not sufficient to establish excessive unexcused absenteeism within the meaning of the law. She did not have a history of failing to give timely notice of intended absences. For the reasons stated herein, the administrative law judge concludes that the employer has failed to satisfy its burden of proof in this matter. While the employer may have had good cause to discharge, 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). Benefits are allowed.

#### DECISION:

The representative's decision dated March 15, 2004, reference 01, is hereby affirmed. Ms. Ploessel was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/b