

**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**

**AMANDA L HOUSER
PO BOX 23
2305 E MAIN
OTTUMWA IA 52501**

**EXCEL CORPORATION
% TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-05472-CT
OC: 04/18/04 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 representative's decision dated May 4, 2004, reference 01, which held that no disqualification would be imposed regarding Amanda Houser's separation from employment. After due notice was issued, a hearing was held by telephone on June 9, 2004. Ms. Houser participated personally. The employer participated by Nick Statler, Human Resources Assistant Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

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. Houser was employed by Excel Corporation from October 7, 2002 until April 9, 2004 as a full-time production worker. On the evening of April 7, she was told by her supervisor, Marlena Marshall, that she could leave after she completed a certain task. Ms. Houser had already complained to Ms. Marshall that she was in pain from gallstones. Approximately two minutes after she was told she could go home, Ms. Marshall called Ms. Houser back to complete work, which had not been done by another employee. Ms. Houser refused because she was in pain and had already been given permission to leave. Because of her refusal to perform the assigned task, she was taken to the back office.

Once in the back office, it was confirmed that Ms. Houser had refused the directive from Ms. Marshall. When told that she was being indefinitely suspended, Ms. Houser became angry and left the meeting. Her identification badge was requested but she refused to give it to the employer. Ms. Marshall and another employee followed Ms. Houser out and continued to ask for her badge. Ms. Houser indicated that, because she had paid for it herself, she felt it belonged to her and she was not going to return it as requested. At the guard shack, however, she cut the badge into four pieces and left it with the guard. Cutting up the badge was considered to be destruction of company property and was one of the reasons for the discharge. Ms. Houser did not initially pay for a badge but had to pay \$25.00 to have her original badge replaced.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Houser 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). Part of the reason for the discharge was Ms. Houser's refusal to perform an assigned task. An individual's failure or refusal to obey a directive is not misconduct if the failure or refusal is in good faith or for good cause. Woods v. Iowa Department of Job Service, 327 N.W.2d 768 (Iowa App. 1982). Part of the reason for Ms. Houser's refusal was the fact that she was in pain and had not been allowed to see health services. She had advised Ms. Marshall earlier in the shift that she was in pain. The administrative law judge concludes that Ms. Houser's pain provided good cause for the refusal to perform the work Ms. Marshall assigned.

The second reason for the discharge was the fact that Ms. Houser cut up her badge. Although she had paid for the badge, she did so only because she had to replace the one originally given to her at no cost. The fact that one pays for damaged or lost property belonging to one's employer does not make the property that of the employee. The badge Ms. Houser cut up was, in fact, the property of Excel. However, at most, this was a single "hot headed" incident and not an act of disqualifying misconduct.

The employer's evidence alleged that Ms. Houser had struck and pushed other individuals as she was leaving the property on April 7. The employer did not provide sworn testimony from any individual with first-hand knowledge of the events of that evening. Ms. Houser denied the allegations contained in the written statements provided by the employer. After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to satisfy its burden of proof. 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). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated May 4, 2004, reference 01, is hereby affirmed. Ms. Houser was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf