

**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**

**RAUL MENDOZA
1106 MAY ST
MARSHALLTOWN IA 50158**

**BEEF PRODUCTS INC
891 TWO RIVERS DR
DAKOTA DUNES SD 57049-5150**

**Appeal Number: 05A-UI-00349-CT
OC: 11/28/04 R: 02
Claimant: Appellant (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:

Raul Mendoza filed an appeal from a representative's decision dated December 29, 2004, reference 01, which denied benefits based on his separation from Beef Products, Inc. After due notice was issued, a hearing was held by telephone on January 27, 2005. Mr. Mendoza participated personally. The employer participated by Rick Wood, Human Resources Manager; Maureen Goss, Human Resources Coordinator; and Jennifer Stubbs, Human Resources Benefits Supervisor.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Mendoza was employed by Beef Products, Inc. from August 10 until December 1, 2004 as a full-time laborer. He was discharged because of his attendance. An individual is subject to discharge when he accumulates 15 attendance points.

Mr. Mendoza was absent on August 20 but did not give the required 30-minute's notice. He did not call until one hour after the start of his shift. His call was late because the battery on his cell phone was dead. He was over one hour late on October 25 because of car trouble. Mr. Mendoza was absent without calling in on November 29. He was in Charles City, Iowa, with a friend who was looking for work. On November 30, Mr. Mendoza did not call to report his absence until 45 minutes after the start of his shift. His car was in the shop and he did not have a ride to work. He did not keep track of the time and, therefore, was late calling the employer. As a result of the above attendance infractions, Mr. Mendoza was discharged on December 1, 2004,

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Mendoza 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). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if he 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. Tardiness in reporting to work is considered a limited absence from work.

Mr. Mendoza accumulated four occasions of unexcused absenteeism during his employment with Beef Products, Inc. The absence of August 20 is unexcused as it was Mr. Mendoza's responsibility to get to a telephone in sufficient time to give proper notice. The fact that the battery on his cell phone was dead did not relieve him of the responsibility to find a telephone from which to call the employer in a timely manner. He was not prevented by illness or incapacity from giving timely notice. The tardiness of October 25 is unexcused as it was due to a matter of purely personal responsibility, transportation. The absence of November 29 is unexcused as Mr. Mendoza failed to notify the employer that he would be absent. Moreover, driving his friend around to look for work would not be reasonable grounds for missing time from his own job. The absence of November 30 is unexcused as it was not timely reported and was not for reasonable grounds. Mr. Mendoza had all day before his 3:30 p.m. start time to notify the employer that he would be absent because his car was in the shop. The fact that he may have lost track of time is not sufficient to excuse his failure. Furthermore, this absence was due to a transportation issue.

Mr. Mendoza was in the employment for slightly over three months. The administrative law judge considers four periods of unexcused absenteeism over three months to be excessive. Mr. Mendoza had notice of his point status each time he accumulated a point. He had the ability to control his final points by giving proper notice of his intended absences. He failed to do so. The administrative law judge concludes from all of the evidence that excessive unexcused absenteeism has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated December 29, 2004, reference 01, is hereby affirmed. Mr. Mendoza 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/pjs