

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

DEANNA L BAULER  
2573 LOGAN AVE  
WATERLOO IA 50703

EXPRESS SERVICES INC  
PO BOX 720660  
OKLAHOMA CITY OK 73172

Appeal Number: 04O-UI-11175-AT  
OC: 06-06-04 R: 03  
Claimant: Appellant (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, 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  
Section 96.5-1 – Voluntary Quit  
Section 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

Deanna L. Bauler filed an appeal from an unemployment insurance decision dated July 16, 2003, reference 03, which disqualified her for benefits upon the finding that she had voluntarily left employment with Express Services, Inc. without good cause attributable to the employer. After due notice was issued, a hearing was held in appeal 04A-UI-08516-ET on August 26, 2004. Administrative Law Judge Julie Elder issued a decision on September 1, 2004 finding that Ms. Bauler's appeal was untimely. That finding was reversed by the Employment Appeal Board in an order dated October 12, 2004. The Board remanded the matter to the Unemployment Insurance Appeals Bureau for a hearing on the merits. After due notice was

issued, a telephone hearing was held November 9, 2004 with Ms. Bauler participating. Staffing consultant Lisa Franzmeyer participated for Express Services, Inc.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Deanna L. Bauler was hired by Express Services, Inc. on June 10, 2004 to work at Ryder Logistics. She last worked on that assignment on June 23, 2004.

On the evening of June 23, 2004 Ms. Bauler was involuntarily hospitalized. She called Express Services on June 24, 2004 to advise the employer of her whereabouts. The employer felt it necessary to replace Ms. Bauler on the assignment because Ms. Bauler did not know how long she would remain hospitalized.

Ms. Bauler was released from the hospital on June 28, 2004. On or about June 29, 2004 she contacted Express personnel services to request reassignment. No assignment could be found for Ms. Bauler until September 10, 2004.

Ms. Bauler had filed an original claim for unemployment insurance benefits effective June 6, 2004. Her benefits are based on all covered wages paid to her in calendar year 2003. During 2003 Ms. Bauler worked for other employers, primarily working the day shift. After her release from the hospital, Ms. Bauler entered a six-week outpatient program which occupied her evenings from 5:00 p.m. until 8:30 p.m. Monday through Thursday.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue is whether Ms. Bauler's separation from employment was a disqualifying event. From the evidence in this record, the administrative law judge concludes that it was not.

Although the agency originally characterized the separation as a discharge, both Ms. Bauler and Ms. Franzmeyer testified that the employer initiated the separation on June 24, 2004 because of Ms. Bauler's hospitalization. Since the employer initiated the separation, it is better characterized as a discharge.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). However, absence due to a medical condition properly reported to the employer is not held against an individual for unemployment insurance purposes. See 871 IAC 24.32(7). The evidence in this record establishes that Ms. Bauler notified the employer as soon as possible after her hospitalization. Because the absences were due to a medical condition and because Ms. Bauler reported them promptly to the employer, the absences cannot be considered acts of misconduct. No disqualification may be imposed.

The claimant's hospitalization and subsequent outpatient treatment raised the issue of her availability for work. Although these issues were not listed on the hearing notice, the parties waived notice and consented to the administrative law judge considering and deciding the issue.

Taking official notice of agency benefit payment records, the administrative law judge concludes that Ms. Bauler did not file weekly claims for benefits during her hospitalization. Since her base period employment was primarily on the day shift and since her outpatient treatment took place during evenings, the administrative law judge concludes that the treatment did not unduly limit Ms. Bauler's availability for work. Express Services, Inc. is not a base period employer. Therefore, it shall not be charged with benefits paid to Ms. Bauler during her current benefit year.

#### DECISION:

The unemployment insurance decision dated July 16, 2003, reference 03, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

b/b