

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

Appeal Number: 04O-UI-00890-DWT
OC 10/05/03 R 01
Claimant: Respondent (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, 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.

AMY L ENRIQUEZ
1213 – 13TH ST
HAWARDEN IA 51023

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 are based.

ADVANCE BRANDS LLC
101 – 14TH ST SE WAY
ORANGE CITY IA 51041

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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Advance Brands LLC (employer) appealed a representative's November 17, 2003 decision (reference 01) that concluded Amy L. Enriquez (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. A hearing was held on December 22, 2003. The claimant did not participate in the hearing. Dawn Nagel, a human resource assistant, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, an administrative law judge issued a December 26, 2003 decision that disqualified the claimant from receiving unemployment insurance benefits. The December 26, 2003 decision also concluded the claimant had been overpaid \$1,746.00 in benefits.

The claimant appealed the December 26, 2003 decision to the Employment Appeal Board. The Employment Appeal Board remanded the matter to the Appeals Section for a new hearing because the claimant had not received the hearing notice and did not know a hearing had been scheduled. Hearing notices were again mailed to the parties for a February 16, 2004 hearing. On February 5, 2004, the claimant contacted the Appeals Section indicating she was leaving the country the next day and would not be available for the scheduled February 16 hearing. The claimant indicated she was returning to Iowa by April 4. The claimant agreed a hearing could be rescheduled in this matter on April 5, 2004.

The hearing was rescheduled for April 5, 2004 at 9:00 a.m. The phone number the claimant provided had been disconnected. The claimant had not provided any other phone number at which to contact her. The claimant did not participate in the hearing. When the employer was called, the employer's witness was not available. Based on the evidence presented during the December 22, 2003 hearing and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked for the employer from October 23, 2002 through September 22, 2003. She worked as a full-time production worker.

During her employment, the employer gave the claimant several warnings about her attendance. On September 16, 2003, the claimant received a final warning. As of September 16, 2003, the claimant only had seven attendance points left. The employer discharges an employee when the employee's attendance points equals zero.

On September 22, 2003, the claimant did not report to work. The employer requires employees to notify the employer 30 minutes prior to the start of a shift when an employee is unable to work as scheduled. The claimant did not notify the employer 30 minutes prior to her shift on September 22 that she was unable to work as scheduled. The claimant did not go to work on September 22 because her child was sick. The claimant did not provide a doctor's statement verifying her child had been ill. As a result of her unexcused September 22 absence, the employer discharged the claimant because she did not have any attendance points left after this absence.

If the claimant would have provided a doctor's statement, fewer attendance points would have been deducted and she would not have been discharged. The claimant established a claim for unemployment insurance benefits during the week of October 5, 2003. The claimant filed claims and received benefits totaling \$1,746.00 in benefits.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct

is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew or should have known her job was in jeopardy because of her repeated attendance problems. On September 22, the claimant failed to properly report her absence and failed to provide the necessary documentation for the employer to excuse this absence. As a result, the employer discharged the claimant for reasons constituting work-connected misconduct. As of October 5, 2003, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits as of October 5, 2003. She has been overpaid \$1,746.00 in benefits.

DECISION:

The representative's November 17, 2003 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 5, 2003. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant has been overpaid a total of \$1,746.00 in benefits she was not legally entitled to receive.

dlw/b