

**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**

**LETICIA M NUNEZ
4315 SE 14TH ST #28
DES MOINES IA 50320**

**DES STAFFING SERVICES INC
3326 INDIANOLA AVE
DES MOINES IA 50315**

**Appeal Number: 04A-UI-03103-AT
OC: 07-13-03 R: 02
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.

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
Section 96.3-7 - Recovery of Overpayment

STATEMENT OF THE CASE:

DES Staffing Services, Inc. filed a timely appeal from an unemployment insurance decision dated March 9, 2004, reference 08, which allowed benefits to Leticia M. Nunez. After due notice was issued, a telephone hearing was held April 9, 2004 with Ms. Nunez participating. Division Manager Brian Moussalli participated for the employer.

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: Leticia M. Nunez began an assignment for

DES Staffing Services, Inc. on February 13, 2004. After working that day, she did not return because of transportation problems. She was responsible for her own transportation. In time the employer had to replace Ms. Nunez on the assignment. Ms. Nunez has received unemployment insurance benefits since the end of the assignment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Ms. Nunez' separation from employment was a disqualifying event. The administrative law judge concludes that it was.

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. Absence due to matters of personal responsibility such as transportation are considered to be unexcused absences. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The evidence establishes that Ms. Nunez became unemployed because the employer had to replace her on the assignment because of her absences. Separation from employment under these circumstances is a disqualifying event.

Iowa Code Section 96.3-7 requires that unemployment insurance benefits paid in error be repaid to the agency. The evidence establishes that Ms. Nunez has received unemployment insurance benefits since this separation from employment. Since she should not have received them, the benefits must be recovered.

DECISION:

The unemployment insurance decision dated March 9, 2004, reference 08, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$924.00.

b/b