

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

SARA K HOUK
1820 RICHMOND AVE
OTTUMWA IA 52501

EXCEL CORPORATION
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-02554-RT
OC: 01-30-05 R: 03
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:

The claimant, Sara K. Houk, filed a timely from an unemployment insurance decision dated March 1, 2005, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on March 29, 2005, with the claimant participating. Adriana Cobos, Human Resources Associate, participated in the hearing 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: The claimant was employed by the employer as a full-time production worker robbing cushions, from December 8, 2003 until she was discharged on January 28, 2005. The claimant was discharged for violation of the employer's rule D-19, interfering with business production. This is a rule in the handbook, a copy of which the claimant received. On January 27, 2005, the claimant shut off the tendon out cushions before the break and told employees to go to the break. The claimant did so without permission and this caused no one to be in place to package the meat. The claimant was then discharged for this act and for the accumulated warnings.

The claimant received numerous warnings in the five months prior to her discharge. On January 20, 2005, the claimant was suspended four days for being in the locker room without a pass. The claimant is supposed to have a pass when she is in the locker room. On December 29, 2004, the claimant received a verbal warning for stabbing meat. Previously, the employer had allowed the employees to stab meat or pick up meat with a knife but it was no longer permitted and the claimant violated the new rule. On November 23, 2004, the claimant received a written warning because she was late to line because she had to use the bathroom. On November 10, 2004, the claimant received a verbal warning again for stabbing the meat which at that time was prohibited by the employer. On October 19, 2004, the claimant received a verbal warning for talking with other employees during a bathroom break. On October 15, 2004, the claimant received a verbal warning for leaving the floor without signing out. The claimant had to use the bathroom but was supposed to sign out and the claimant did not sign out when she left the floor. On October 5, 2004, the claimant received a verbal warning for leaving a plate on the table in the cafeteria. She also on that date received a verbal warning for leaving product on the floor but this verbal warning was later expunged. On September 28, 2004, the claimant received a written warning for raising a knife above her head which is prohibited. She was showing her supervisor the knife but she had a plastic tarp over her head and she cut it. On September 14, 2004, the claimant received a verbal warning for wearing a necklace on the production floor which is prohibited. The claimant forgot she had a necklace on. On September 8, 2004, the claimant received a verbal warning for missing a cushion or letting meat by without cutting it.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. 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).

The parties seem to agree, and the administrative law judge concludes, that the claimant was discharged on January 28, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. After receiving 10 verbal and written warnings and one four-day suspension in the last five months of the claimant's employment, on January 27, 2005, the claimant shut off the tendon out cushions before the break and told employees to go to break without permission. By having all of the employees go on break, it left no one in place to package the meat. The claimant testified that a utility person told her to do it but seems to agree that there was no one in place to package the meat and that this was wrong. In view of all of the warnings and suspension the claimant received, the administrative law judge is constrained to conclude that the claimant's acts were deliberate acts or omissions constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evince a willful or wanton disregard of the employer's interests and are, at the very least, carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. It is true that one of the verbal warnings on October 5, 2004 was later expunged, but the claimant still should have been on more than ample notice to watch her behavior carefully because of all of the warnings and nevertheless she continued to commit offenses finally culminating with the act on January 27, 2005.

The administrative law judge also concludes that the "last straw doctrine" enunciated in Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983) applies here. That doctrine states that a relatively minor infraction when viewed in the light of prior infractions may evidence sufficient disregard for the employer's interests to constitute misconduct. The fact that the prior acts were remote in time from the one for which the employee was discharged, or different in nature, does not preclude a finding of misconduct. Here, all of the

prior acts and warnings and suspension were not remote in time, all occurring in the last five months of the claimant's employment. Further, it does not appear that all of the acts and warnings were different in nature because many involved rules and regulations of the employer which the claimant seemed to continue to violate. The administrative law judge concludes that all of the claimant's acts including the warnings and disciplines evidence sufficient disregard for the employer's interests to establish disqualifying misconduct.

In summary, and for all of the reasons set out above, the administrative law judge concludes that the claimant's acts culminating with her act on January 27, 2005, were disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

DECISION:

The representative's decision of March 1, 2005, reference 01, is affirmed. The claimant, Sara K. Houk, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she was discharged for disqualifying misconduct.

pjs/pjs