

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

JOEL A VELADO
303 N ASH
OTTUMWA IA 52501

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

Appeal Number: 04A-UI-08390-DWT
OC: 07/04/04 R: 03
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 are 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 of Benefits

STATEMENT OF THE CASE:

Excel Corporation (employer) appealed a representative's July 26, 2004 decision (reference 01) that concluded Joel A. Velado (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. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 25, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. The interpreter was excused from the hearing after the claimant did not respond to the hearing notice. Nick Statler, a human resource assistant manager, appeared on the employer's behalf. During the hearing, Employer's Exhibits One through Five were offered and admitted as evidence. Based on the

evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on February 19, 2002. He worked as a full-time production worker. The employer's rules inform employees they can be discharged if they sleep during their shift.

On July 9, 2004, a supervisor and an employee observed the claimant sleeping during his shift. The claimant was in a maintenance room with the door shut. The claimant was sleeping on a chair that was between a filing cabinet and a wall. The employer discharged the claimant on July 9, 2004 for violating the employer's rule by sleeping on the job.

The claimant established a claim for unemployment insurance benefits during the week of July 4, 2004. He filed claims for the weeks ending July 10 through 31, 2004. He received a total of \$1,223.00 in benefits during these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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 claimant knew or should have known he would be discharged if he slept at work during a work shift. The evidence indicates the claimant intentionally and substantially violated the employer's rules by sleeping at work on July 9, 2004. The employer established the claimant was discharged for work-connected misconduct. As of July 4, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he 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 during the weeks ending July 10 through 31, 2004. He has been overpaid a total of \$1,223.00 in benefits he received for these weeks.

DECISION:

The representative's July 26, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 4, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending July 10 through 31, 2004. He has been overpaid a total of \$1,223.00 in benefits he received for these weeks.

dlw/kjf