

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

ELEAZAR P LOZANO
2191 LEXINGTON BLVD
WASHINGTON IA 52353

HUBER SLATS INC
1497 – 170TH ST
WELLMAN IA 52356

Appeal Number: 05A-UI-00494-CT
OC: 12/19/04 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:

Eleazar Lozano filed an appeal from a representative's decision dated January 11, 2005, reference 01, which denied benefits based on his separation from Huber Slats, Inc. After due notice was issued, a hearing was held by telephone on January 31, 2005. Mr. Lozano participated personally and offered additional testimony from Bill Silva. The employer participated by Zana Ennis, Bookkeeper, and Michael Kurtz, Laborer.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Lozano was employed by Huber Slats, Inc. from July 21

until October 29, 2004 as a full-time laborer. During the course of his employment, he missed 6.5 days of work. He missed one day due to car trouble. On October 7, he smashed his finger at work, saw a doctor, and was to return to work the following day. He did not return on October 8. When he returned to work on October 11, he did not have a doctor's excuse. The employer was presented a doctor's note on October 12, which excused Mr. Lozano for October 7 and 8. On October 25, he properly reported that he would be absent because his eyes were swollen due to allergies. He worked on October 26 and 27 and his eyes were not swollen on either day. He was absent on October 28 but did not call the employer. He indicated the absence was due to the fact that his eyes were again swollen. When Mr. Lozano reported to work on October 29, he was told that his services were no longer needed as his job had been eliminated.

In making the decision to discharge Mr. Lozano, the employer also considered his work habits. On one occasion, he was looking through his lunch pail when he should have been working. There were other occasions on which he would be talking on his cell phone when he should have been working. The employer also felt he spent more time in the bathroom than necessary. With regard to his work performance, Mr. Lozano had only been told to pick up the pace.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Lozano was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Lozano was discharged because of his attendance and because of his work habits. He was never warned that his work habits, except for his pace, were jeopardizing his continued employment.

The final event, which caused the employer to discharge Mr. Lozano, was his unreported absence of October 28. Since he had reported his prior absences, he knew that the employer required him to call if he was going to be absent. He had to have known, without benefit of prior warnings, that missing work without calling in could cause him to lose his employment. The administrative law judge is not satisfied that Mr. Lozano had no way of contacting the employer on October 28. Given Mr. Lozano's brief period of employment of approximately three months, the administrative law judge considers his one unexcused absence to be sufficient to establish disqualifying misconduct. Accordingly, benefits are denied.

DECISION:

The representative's decision dated January 11, 2005, reference 01, is hereby affirmed. Mr. Lozano was discharged for disqualifying misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/sc