

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

STEPHEN L SWYGARD  
2649 WAYLAND RD #18  
WASHINGTON IA 52353

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

Appeal Number: 05A-UI-05680-CT  
OC: 04/24/05 R: 03  
Claimant: Respondent (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, 4<sup>th</sup> 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:

Excel Corporation filed an appeal from a representative's decision dated May 13, 2005, reference 01, which held that no disqualification would be imposed regarding Stephen Swygard's separation from employment. After due notice was issued, a hearing was held by telephone on June 15, 2005. Mr. Swygard participated personally. The employer participated by Mindy Ming, Assistant Human Resources Manager. Exhibits One through Four were admitted on the employer's behalf.

#### 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. Swygard was employed by Excel Corporation from May 11, 1999 until April 18, 2005 as a full-time production worker. As he was leaving the building on April 13, he was singing a song he had heard on television about getting a shotgun and killing someone. He had substituted the words "blue hats" for an original word from the song. The term "blue hats" is used to refer to supervisors at Excel. As he was singing the song, he passed a security guard who heard him singing about getting a shotgun and killing the "blue hats." After the incident was reported by security, Mr. Swygard was suspended. He was notified of his discharge on April 18, 2005. The above matter was the sole reason for the discharge.

Mr. Swygard was singing the song as a joke to get a laugh from the individuals outside the door he was exiting. He had not had any difficulties with a "blue hat" that day and did not have a history of conflicts with "blue hats." It was not Mr. Swygard's intent to threaten the health or safety of anyone at Excel.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Swygard 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. Swygard was discharged for allegedly threatening other employees, specifically, supervisors. Under the circumstances presented, the administrative law judge does not believe it was his intent to threaten anyone. At most, he used poor judgment in singing a song that could be construed as a threat. This was an isolated instance of such conduct.

This might be a different case if Mr. Swygard had been reprimanded or had had some other negative experience with a supervisor that day. It might also be a different case if he had some history of conflicts with supervisory personnel. Under such circumstances, the administrative law judge would be inclined to conclude that his conduct was the product of malice and, therefore, a serious threat constituting misconduct. Inasmuch as there is no basis on which to conclude that Mr. Swygard might have had reason to threaten actual harm to a supervisor, the administrative law judge concludes that his error in judgment does not constitute disqualifying misconduct.

The administrative law judge appreciates that the employer would want to err on the side of caution and remove any possibility of harm to supervisors and others. While the employer may have had good cause to discharge Mr. Swygard, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated May 13, 2005, reference 01, is hereby affirmed. Mr. Swygard was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs