

**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**

**CHARLES E YODER
806½ N GERAGHTY ST
LOS ANGELES CA 90063**

**EXCEL CORPORATION
% TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-03806-CT
OC: 02/29/04 R: 12
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, 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:

Excel Corporation filed an appeal from a representative's decision dated March 24, 2004, reference 01, which held that no disqualification would be imposed regarding Charles Yoder's separation from employment. After due notice was issued, a hearing was held by telephone on June 3, 2004. Mr. Yoder participated personally. The employer participated by Nick Statler, Human Resources Assistant Manager. Exhibits One through Nine 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. Yoder was employed by Excel from August 29, 2000 until January 15, 2004 as a full-time production employee. He was discharged based on an allegation that he destroyed company property.

On January 15, 2004, Mike Larkin reported that someone had put glue on his lock in the locker room. He indicated in his written statement that only Mr. Yoder was present when he entered the locker room. Dwight Peterson was already in the locker room when Mr. Yoder entered. Mr. Peterson indicated in his statement that he walked out of the locker room and followed Mr. Larkin to the time clock. Bill Glosser indicated in his statement that he saw Mr. Larkin and Mr. Peterson leave the locker room, presumably together, and go toward the time clock. Mr. Glosser indicated that a few minutes passed and he saw Mr. Larkin return to the locker room. He further indicated that after two or three minutes, Mr. Larkin approached him to advise of the glue on his lock. No one observed Mr. Yoder putting glue on the lock and he denied having done so when confronted by the employer. The employer believed that he was, in fact, the person responsible for the glue and, therefore, discharged him.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Yoder 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 in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Yoder was discharged based on an allegation that he destroyed company property by putting glue on a coworker's lock. This allegation has not been established to the satisfaction of the administrative law judge. At least one other individual, Dwight Peterson, had an opportunity to put the glue on the lock as he was in the locker room before Mr. Yoder arrived.

Some of the statements admitted as exhibits speak of how fast the glue was drying. The individuals were not offered as witnesses to be examined and cross-examined. The administrative law judge did not have the benefit of seeing the lock with the glue to try to determine what type of glue it was. The employer's evidence consisted solely of the written statements from individuals who were present at the time of the incident. The administrative law judge finds the evidence insufficient to establish the contention that Mr. Yoder put glue on a coworker's lock. For the above reasons, it is concluded that the employer has failed to establish misconduct. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated March 24, 2004, reference 01, is hereby affirmed. Mr. Yoder was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf