

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

IRMA O SANDOVAL
Claimant

APPEAL NO. 09A-UI-07911-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 04/19/09
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Express Services, Inc. filed an appeal from a representative's decision dated May 21, 2009, reference 01, which held that no disqualification would be imposed regarding Irma Sandoval's separation from employment. After due notice was issued, a hearing was held by telephone on June 17, 2009. The employer participated by Holly Burtness, Staffing Consultant. Ms. Sandoval did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Sandoval was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Sandoval began working for Express Services, Inc., a temporary placement service, on June 3, 2008. She was assigned to Aeron Advanced Manufacturing, where she worked full time until April 23, 2009. She was discharged because she walked off the job on April 23. Ms. Sandoval was scheduled to work from 7:00 a.m. until 3:30 p.m. but left at 12:18 p.m. She did not check with a supervisor or notify anyone in management that she was leaving work early. As a result, she was discharged from the assignment.

Ms. Sandoval filed a claim for job insurance benefits effective April 19, 2009. She has received a total of \$1,879.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

When Ms. Sandoval filed her claim for benefits effective April 19, 2009, she was unemployed because she had been discharged from her assignment with Aeron Advanced Manufacturing. 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). Ms. Sandoval was discharged for walking off the job on April 23. She knew or should have known that she was expected to remain at work until the conclusion of her shift unless permission was granted to leave early.

Ms. Sandoval's conduct in walking off the job constituted a substantial disregard of the standards an employer has the right to expect. For the above reasons, it is concluded that disqualifying misconduct has been established. As such, benefits are denied.

Ms. Sandoval has received benefits since filing her claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated May 21, 2009, reference 01, is hereby reversed. Ms. Sandoval was discharged for misconduct in connection with her employment. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Sandoval will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs