

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

MELISSA A CORTESIO  
21805 – 140<sup>TH</sup> AVE  
CENTERVILLE IA 52544

RUBBERMAID INC  
2800 INDUSTRIAL PARK RD  
CENTERVILLE IA 52544

Appeal Number: 05A-UI-03233-CT  
OC: 02/27/05 R: 03  
Claimant: Appellant (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, 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Melissa Cortesio filed an appeal from a representative's decision dated March 24, 2005, reference 01, which denied benefits based on her separation from Rubbermaid, Inc. After due notice was issued, a hearing was held by telephone on April 22, 2005. Ms. Cortesio participated personally. The employer participated by Julie Smith, Human Resources Representative; Barb Hunt, Human Resources Manager; John Clark, Technical Supervisor; and Dave Masker, Technical Services Manager. Exhibit One was 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: Ms. Cortesio was employed by Rubbermaid, Inc. from November 15, 2001 until March 2, 2005 as a full-time mold changer. She was discharged as a result of an altercation with a coworker, Jack Parrish, on February 10, 2005.

Ms. Cortesio and Mr. Parrish were previously involved in a romantic relationship for three years and lived together from the fall of 2002 until January of 2005. The employer became aware of friction between the two in January of 2005 and attempted to keep them separated at work. On February 10, Mr. Parrish was calling Ms. Cortesio names and, therefore, she smashed a handful of peat sorp (a material used to absorb spills) into his face. Shortly after this incident, Ms. Cortesio was using a remote to control a crane when Mr. Parrish told her she did not know what she was doing. In response, she threw the remote to him and struck him in the stomach. As a result of her actions, Ms. Cortesio was suspended on February 10 for three days.

Ms. Cortesio returned to work from the suspension on February 19. On February 20, the employer learned that her hand had actually made contact with Mr. Parrish's face on February 10. On that same day, the employer spoke with witnesses who confirmed that Mr. Parrish had been struck. Ms. Cortesio continued to work her normal job until notified of her discharge on March 2, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Cortesio 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). The employer's burden included establishing that the discharge was predicated on a current act of misconduct. Ms. Cortesio was discharged on March 2 because of an incident that occurred on February 10, almost three weeks earlier.

All of the information necessary to make a discharge decision was known by the employer by February 20. The employer still delayed the discharge for over a week. The evidence of record does not establish any justification for delaying the discharge decision. The fact that the direct supervisor and the department manager did not work the same shift was not justification for the delay. The two had the means of communicating with each other even though they did not work the same shift. Given the employer's delay, the administrative law judge cannot conclude that the February 10 incident represented a current act in relation to the March 2 discharge date. Inasmuch as there was no evidence of a current act of misconduct, no disqualification is imposed.

#### DECISION:

The representative's decision dated March 24, 2005, reference 01, is hereby reversed. Ms. Cortesio was discharged but a current act of misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/sc