

**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**

**RAMON G RODRIGUEZ
632 – 12TH AVE APT 3
CORALVILLE IA 52241**

**CENTRO INC
950 N BEND DR
NORTH LIBERTY IA 52317**

**Appeal Number: 04A-UI-07658-DWT
OC: 09/07/04 R: 03
Claimant: Appellant (5)**

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 are 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

STATEMENT OF THE CASE:

Ramon G. Rodriguez (claimant) appealed a representative's July 15, 2004 decision (reference 09) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Centro, Inc. (employer) would not be charged because the claimant had voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 5, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Gary Vance appeared on the employer's behalf. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 10, 2004. The employer's policy informs employees that a new employee with one or more unexcused absences will be subject to discipline, including termination. When an employee is absent for three or more consecutive days without notifying the team leader, the employer involuntarily terminates the employee for violating the employer's attendance policy.

The last day the claimant worked was June 17, 2004. The employer does not have a record of the claimant notifying the employer he would not be at work on June 18, 21, 22, or 23, 2004. On June 23, 2004, the employer sent the claimant a letter informing he was involuntarily terminated because he had violated the employer's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The record indicates the employer initiated the separation on June 23 by sending the claimant notice he no longer worked for the employer.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

Although the claimant asserted in his appeal letter he notified the employer on June 18 that he would be absent and this contact would cover subsequent absences, the employer does not have a record of this contact. Since the claimant did not participate in the hearing, it is not known why he was absent after June 17, 2004 or when or if he talked to anyone in management. The record indicates the claimant knowingly violated the employer's attendance policy because his absences were not excused. The employer discharged the claimant for reasons amounting to work-connected misconduct. As of June 20, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 15, 2004 decision (reference 09) is modified but the modification has no legal consequence. The claimant did not voluntarily quit his employment. Instead, the employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 20, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/kjf