

**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**

**ANTOINETTE GUERRA
2402 S PATTERSON
SIOUX CITY IA 51106**

**VANITY SHOP OF GRAND FORKS INC
PO BOX 547
FARGO ND 58102**

**Appeal Number: 04A-UI-04969-CT
OC: 04/04/04 R: 01
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, 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:

Antoinette Guerra filed an appeal from a representative's decision dated April 22, 2004, reference 01, which denied benefits based on her separation from Vanity Shop of Grand Forks, Inc. After due notice was issued, a hearing was held by telephone on June 1, 2004. Ms. Guerra participated personally. The employer responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing. Two attempts were made to contact the employer and the telephone was allowed to ring 12 times on each occasion but there was no answer.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Guerra was employed by Vanity Shop from January 17 until April 7, 2004 as a full-time assistant manager. Because of problems with her pregnancy, she left work early on April 5 at approximately 2:30 p.m. She indicated at the time that she probably would not be back at work that day. She returned to the store approximately 30 minutes later to get a telephone number and advised her manager that she would not be returning to complete her shift, which ended at 9:00 p.m.

Ms. Guerra was not scheduled to work on April 6. When she reported for work at her scheduled time on April 7, she was notified by her manager that she no longer had a job. The manager indicated that she had been instructed by payroll to remove her from the employment. Ms. Guerra contacted her district manager on the afternoon of April 7 and was told that she had been discharged due to a "no call/no show." Ms. Guerra explained that this was not the case but was never extended an invitation to return to the employment. She had not missed any days of work prior to April 5. Although she had been late on some occasions, she had never been warned that her continued employment was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Guerra was separated from employment for any disqualifying reason. The employer's protest to the claim indicated that she had been discharged by her store manager due to an unauthorized absence. 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). The employer did not participate in the hearing to explain which absence was unauthorized. Ms. Guerra was not absent prior to April 5. After leaving on April 5, she gave notice to her supervisor that she would not be returning that day. She then returned to work on her next scheduled day. The evidence of record does not identify any absence that the administrative law judge would consider unauthorized.

The employer in this matter has failed to satisfy its burden of proving disqualifying misconduct. There was no evidence that Ms. Guerra deliberately or intentionally acted in a manner she knew to be contrary to the employer's interests or standards. She was not on notice that she might lose her job for any reason. For the reasons stated herein, the administrative law judge concludes that benefits should be allowed.

DECISION:

The representative's decision dated April 22, 2004, reference 01, is hereby reversed. Ms. Guerra was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/b