

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 ESTRADA
7 HARTFORD AVE
DES MOINES IA 50315

QWEST CORPORATION
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 04A-UI-09555-CT
OC: 07/25/04 R: 02
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:

Melissa Estrada filed an appeal from a representative's decision dated August 25, 2004, reference 01, which denied benefits based on her separation from Qwest Corporation. After due notice was issued, a hearing was held by telephone on September 28, 2004. Ms. Estrada participated personally. The employer participated by Anne Rodriguez, Customer Relations Manager, and was represented by Judi McBroom of Employers Unity, Inc. Exhibits One through Five 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: Ms. Estrada was employed by Qwest from July 28, 2003 until July 20, 2004 as a full-time customer service representative. She was discharged from the employment because of her attendance.

Ms. Estrada was absent on October 6, October 25, November 19, December 26, 2003, and February 6, 2004 for unknown reasons. All of the absences were properly reported. She was late reporting to work on six occasions from October 13, 2003 through April 14, 2004. On April 14, Ms. Estrada was given a warning of dismissal which advised that she would be discharged if there were further attendance issues. The warning also addressed her failure to work mandatory overtime on six occasions, the last of which was April 3, 2004. On May 19, Ms. Estrada was again late for work. On June 2, the warning of dismissal was reissued.

The decision to discharge Ms. Estrada was due to the fact that she was absent on July 12. She called to report that she was having trouble finding child care. She had made prior arrangements for child care but the plans fell through at the last minute. She offered to come in later after her mother was available to provide child care. She was told that whether she was absent or late that day, the impact would be the same. Ms. Estrada had not been absent since February 6 and had not been late since May 19. Attendance was the sole reason for the discharge of July 20, 2004. During the interim between July 12 and the discharge date, Ms. Estrada's records were being reviewed to determine if she would be discharged. She was on notice throughout this period that a decision on her continued employment was in the process of being made.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Estrada 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). Ms. Estrada was discharged because of her attendance. The evidence of record does not disclose the reason for the absences through February 6, 2004. Without knowing the reason for the absences, the administrative law judge cannot conclude that they were unexcused absences. The occasions of tardiness are considered unexcused as the evidence does not establish any reasonable cause for it. Ms. Estrada had made substantial progress towards meeting the employer's attendance standards after her warning of dismissal. As of the discharge date in July, she had not been absent since February 6 and had not been late since May 19. She had not missed any mandatory overtime since April 3.

The final absence which triggered the discharge was due to lack of child care. Absences due to matters of purely personal responsibility, such as child care, are ordinarily not excused absences. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). However, it does not appear that Ms. Estrada was ever absent before due to issues of child care. Her absence of July 12 was due to an unforeseen circumstance as the child care arrangements she had previously made fell through at the last minute. Given this factor, the administrative law judge concludes that the absence of July 12 should be considered excused. Because of Ms. Estrada's substantial improvement in her attendance after the warnings and because of the time lapse between her prior infractions and the final incident, the administrative

law judge concludes that disqualifying misconduct has not been established. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated August 25, 2004, reference 01, is hereby reversed. Ms. Estrada was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/b