

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

ROBBYN A HEWITT
206 – 2ND AVE NW
ROCKFORD IA 50468

EXPRESS SERVICES INC
PO BOX 720660
OKLAHOMA CITY OK 73172

Appeal Number: 05A-UI-01993-CT
OC: 01/09/05 R: 02
Claimant: Respondent (1)

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:

Express Services, Inc. filed an appeal from a representative's decision dated February 22, 2005, reference 03, which held that no disqualification would be imposed regarding Robbyn Hewitt's separation from employment. After due notice was issued, a hearing was held by telephone on March 14, 2005. Ms. Hewitt participated personally. The employer participated by Andre Smith, Staffing Consultant.

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. Hewitt was employed by Express Services, Inc., a

temporary placement firm, beginning in October of 2004. She worked an assignment with Advance Component Technology from October 6, 2004 until January 7, 2005. The client chose to end the assignment because of Ms. Hewitt's attendance. Her absences were due to her own illness, that of her child, or weather conditions. All of her absences were properly reported. She had not been warned that she was in danger of losing her assignment.

On January 24, 2005, Ms. Hewitt was placed on an assignment with Sunny Fresh Foods and was to work until the end of March of 2005. Her last day at work was February 11. On February 14, she left a message for her supervisor that she would not be in as she was going to the doctor because of chest pains. On February 15, she notified her supervisor that she would be absent because she had been placed on medications that made her tired. Ms. Hewitt did not call or report to work on February 16. At that point, she was discharged from the employment and a letter to that effect was mailed to her.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Hewitt 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. Hewitt was discharged because of her attendance. She did miss time from work on both of her assignments through Express Services, Inc. All of the absences were for reasonable cause. Her absences were due primarily to either her own illness or that of her child. She missed only one day of work due to inclement weather conditions.

With the exception of February 16, all of Ms. Hewitt's absences were properly reported. Given that this absence was the third day after she had properly reported two days of absence for medical reasons and given that she had not been warned about her attendance, the administrative law judge concludes that the one unexcused absence of February 16 is not sufficient to establish excessive unexcused absenteeism. Accordingly, no disqualification is imposed.

DECISION:

The representative's decision dated February 22, 2005, reference 03, is hereby affirmed. Ms. Hewitt was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/sc