

**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**

**JULIO M FRANCISCO
2217 S 11TH ST #2
OMAHA NE 68105**

**CON AGRA – COUNCIL BLUFFS
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-04993-CT
OC: 04/04/04 R: 01
Claimant: Appellant (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:

Julio Francisco filed an appeal from a representative's decision dated April 21, 2004, reference 01, which denied benefits based on his separation from Con Agra. After due notice was issued, a hearing was held by telephone on May 26, 2004. Mr. Francisco participated personally. The employer participated by Julie Millard, Human Resources Generalist. Guadalupe McCarney participated as the interpreter.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Francisco was employed by Con Agra from December 4, 2000 until March 22, 2004. He was last employed full time as a case-packer operator. He was discharged because his work authorization expired on March 22, 2004 and he could not provide proof that he was legally authorized to continue working in the United States.

Mr. Francisco has been in the United States and obtaining work permits for 14 years. He knew he was required to apply for renewal of the work permit at least 90 days before it expired. Con Agra, as a courtesy, routinely sends out notices 120 days before the expiration of an individual's work permit. Mr. Francisco did not apply for a renewal until two months before his permit expired. He had not received the renewal by March 22 when his permit expired. His failure to have a valid authorization to work was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Francisco 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 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). Mr. Francisco was discharged because his work authorization expired. He had not made a timely application to renew the work permit. It was his responsibility to be aware of the expiration date of his permit and to apply for a renewal in a timely fashion so that he could continue working.

Where an individual's own conduct makes him unemployable by his employer, he is guilty of misconduct within the meaning of the law. See Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980). Obtaining a valid work permit was solely Mr. Francisco's responsibility. Inasmuch as he failed to timely obtain a new work permit which would have enabled him to continue working for Con Agra, he is guilty of misconduct. Accordingly, benefits are denied.

DECISION:

The representative's decision dated April 21, 2004, reference 01, is hereby affirmed. Mr. Francisco was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/kjf