

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

PABLO FIERRO
811 N HOLT
OTTUMWA IA 52501

EXCEL CORPORATION
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-05713-CT
OC: 04/18/04 R: 03
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:

Excel Corporation filed an appeal from a representative's decision dated May 6, 2004, reference 02, which held that no disqualification would be imposed regarding Pablo Fierro's separation from employment. After due notice was issued, a hearing was held by telephone on June 17, 2004. Mr. Fierro participated personally. The employer participated by Nick Statler, Human Resources Assistant Manager.

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. Fierro was employed by Excel from December 11, 2001

until April 22, 2004. He was a full-time production worker. He was discharged based on an allegation that he set fire to a frock being worn by a coworker. The incident occurred on April 22 when the frock of Josh Buck was set on fire. Mr. Buck did not see who set the fire but told the employer he believed it was Mr. Fierro because of where he was standing. Another individual, Nick Sanchez, told the employer he saw Mr. Fierro set the fire. Mr. Fierro denied responsibility for the fire. He did not see the fire set but believed Mr. Sanchez had set it because he had a lighter.

Based on the statements of Mr. Buck and Mr. Sanchez, the employer believed Mr. Fierro was responsible for the fire. As a result, he was discharged. The above incident was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Fierro 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. Fierro was discharged based on an allegation that he set fire to the frock a coworker was wearing, an allegation he denied under oath. The employer did not present either Mr. Buck or Mr. Sanchez as witnesses to be available for examination and cross-examination. The administrative law judge found nothing to detract from Mr. Fierro's credibility.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to satisfy its burden of proving that Mr. Fierro was the individual responsible for setting fire to Mr. Buck's frock. Inasmuch as this was the sole reason for the discharge, it is concluded that disqualifying misconduct has not been established by the evidence. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated May 6, 2004, reference 02, is hereby affirmed. Mr. Fierro was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/b