

**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**

**ARMANDO CARDENAS
200 W CHERRY ST #A
SALEM IA 52649**

**SAWMILL MANAGEMENT INC
2841 KENTUCKY AVE
MT PLEASANT IA 52641**

**Appeal Number: 04A-UI-00860-CT
OC: 10/12/03 R: 04
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:

Sawmill Management, Inc. filed an appeal from a representative's decision dated January 23, 2004, reference 02, which held that no disqualification would be imposed regarding Armando Cardenas' separation from employment. After due notice was issued, a hearing was held by telephone on February 17, 2004. Mr. Cardenas participated personally. The employer participated by Melodee Yaley, Personnel.

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. Cardenas was employed by Sawmill Management, Inc. from December 1 until December 10, 2003 as a full-time laborer. On his third day of work, he sustained an injury to his arm and wrist when lumber fell on him. He was released to perform light-duty work and the employer accommodated him. He was transferred to a job handling smaller pieces of lumber. The supervisor in that area advised him that he would be in that area permanently. Mr. Cardenas continued to work with smaller pieces of lumber even after he was released to full duty on December 8. He was discharged on December 10 and told that the discharge was because the employer did not want him to injure himself again. He did not refuse to perform any work assigned to him. Prior to his injury, he was fully capable of performing the job for which he was hired.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Cardenas 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. Cardenas was discharged because the employer did not want him to sustain another injury. There was no competent evidence that he was not at all times working to the best of his abilities. Being physically unable to perform the job is not disqualifying misconduct. See 871 IAC 24.32(1).

For the reasons stated herein, the administrative law judge concludes that the employer has failed to establish that Mr. Cardenas should be disqualified from receiving job insurance benefits.

DECISION:

The representative's decision dated January 23, 2004, reference 02, is hereby affirmed. Mr. Cardenas was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf