

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

DEBRA S WHITING
4905 JORDANS GROVE RD
CENTRAL CITY IA 52214

CHICAGO EXPRESS AIRLINES INC
c/o ADP UNEMPLOYMENT GROUP
PO BOX 66744
ST LOUIS MO 63166-6744

Appeal Number: 04A-UI-11785-AT
OC: 08/22/04 R: 03
Claimant: Respondent (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 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

Chicago Express Airlines filed a timely appeal from an unemployment insurance decision dated October 19, 2004, reference 03, which allowed benefits to Debra S. Whiting. After due notice was issued, a telephone hearing was held on November 22, 2004 with Ms. Whiting participating. Human Resources Manager Vanetta Logan and Station Manager Max Rotzler participated for the employer.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Debra S. Whiting was employed as a customer service agent by Chicago Express Airlines, Inc. from August 26, 2002 until August 13, 2004. She last worked on or about August 7, 2004. Ms. Whiting requested six days of vacation beginning August 8, 2004. Station Manager Max Rotzler denied her request. Nevertheless, Ms. Whiting was absent without contact. She called Mr. Rotzler on August 13, 2004 to inquire if she still had a job. She did not. Ms. Whiting has received unemployment insurance benefits since filing a claim effective August 22, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that Ms. Whiting's separation was a disqualifying event. It was.

The separation can be viewed as a voluntary quit. The evidence establishes that Ms. Whiting was absent without contact for six consecutive days. A provision in the Iowa Administrative Code establishes a general rule that absence without contact for only three days is presumed to be a voluntary quit. Using that analysis, benefits would be withheld.

The evidence also establishes that Ms. Whiting contacted the employer but was not allowed to return to work. Viewing that conversation as a discharge, the administrative law judge also concludes that benefits should be withheld.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency,

unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The evidence establishes six days of absence without contact and with the knowledge that a vacation request had been denied. This is sufficient to establish excessive unexcused absenteeism. It is also sufficient to establish insubordination, another form of misconduct. Viewed either as a discharge or as a quit, the separation was a disqualifying event.

Ms. Whiting has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated October 19, 2004, reference 03, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$1,904.00.

kjf/tjc