

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

RICHARD L DUMIRE
903 – 9TH AVE NE
INDEPENDENCE IA 50644

TYSON RETAIL DELI MEATS INC
C/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-09400-CT
OC: 08/01/04 R: 03
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:

Richard Dumire filed an appeal from a representative's decision dated August 24, 2004, reference 01, which denied benefits based on his separation from Tyson Retail Deli Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on September 28, 2004. Mr. Dumire participated personally. The employer participated by Paul Hunziker, Operations 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. Dumire was employed by Tyson from November 18,

1991 until July 22, 2004 as a full-time laborer. He was discharged for repeated tardiness in reporting to work. The employer tracks attendance on a point system in which an individual is subject to discharge if he accumulates 14 or more points during any 12-month period. If an individual is late for work without calling in advance, he is assessed one point. If he is late but calls to report the intended tardiness, he is assessed one-half of a point. Mr. Dumire had 14 points at the time of discharge.

From August 27, 2003 through the date of discharge, Mr. Dumire was late on 15 separate occasions for which he received points. The tardiness ranged from 6 minutes to 48 minutes. A number of the incidents were due to car trouble. Mr. Dumire received written notices advising him of his point status on November 14, 2003, and January 13, February 17, and March 8, 2004. The final incident which caused his discharge was on July 21 when he was 8 minutes late. He never advised the employer that he was late on this occasion because he was stopped by a supervisor on the way to clock in. Mr. Dumire did not confirm his punch-in time as recorded on the time clock. Tardiness was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Dumire 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. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if he was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences. Tardiness in reporting for work is considered a limited absence from work.

Mr. Dumire was late on 15 occasions during a period of approximately 11 months. The evidence of record does not establish any good reason for the repeated tardiness. Mr. Dumire contended that some of his tardiness was due to the ill health of his father and grandmother. He could not explain how these factors caused him to be late for work. If he was able to report for work at all in spite of their illnesses, he could have reported timely. Mr. Dumire also made some vague contentions regarding changes at Tyson and how he felt unappreciated for his hard work. However, he could not explain how these factors caused him to be late for work. His tardiness caused by car trouble would not be excused as absences caused by matters of purely personal responsibility, such as transportation, are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

Mr. Dumire's contention that he was late on July 21 because he was stopped by a supervisor on the way to clock in was not found credible. If there was some justification for the tardiness which triggered his discharge, one would have expected him to so advise the employer of this fact. However, Mr. Dumire did not raise the issue of being stopped by a supervisor until the hearing on September 28. He indicated he thought he was within the 5-minute grace period when he clocked in on July 21. However, he could have checked his punch-in time on the time clock. If the time clock showed him punching in after the grace period, he could have asked the supervisor to approve a change in his arrival time. He did not do so. Because Mr. Dumire failed to notify the employer of a factor which may well have prevented his discharge, the administrative law judge is not inclined to give the contention any credibility.

Inasmuch as the evidence does not establish any justification for the repeated tardiness, it is all considered unexcused. Mr. Dumire's 15 occasions of tardiness during 11 months is considered excessive. The administrative law judge appreciates that Mr. Dumire was otherwise a good employee for Tyson. However, the employer had the right to expect that he would arrive at work in a timely manner. An employer cannot maintain the efficiency of its production operation if employees do not report for work timely. Mr. Dumire's excessive unexcused tardiness constituted misconduct sufficient to disqualify him from receiving job insurance benefits.

DECISION:

The representative's decision dated August 24, 2004, reference 01, is hereby affirmed. Mr. Dumire 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/b