

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

NATHAN R TAYLOR
207 "C" ST #3
TOLEDO IA 52342

TYSON FRESH MEATS INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-02330-CT
OC: 01/30/05 R: 02
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:

Nathan Taylor filed an appeal from a representative's decision dated March 2, 2005, reference 01, which denied benefits based on his separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on March 23, 2005. Mr. Taylor participated personally. The employer participated by Dave Duncan, 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. Taylor was employed by Tyson from July 2, 2002 until

February 2, 2005 as a full-time production worker. He was discharged for violating the employer's safety standards. The final incident occurred on February 1 when he failed to follow the proper "lock out/tag out" procedure when working on machinery. The procedure is in place to prevent power from going to a machine that is being worked on. Mr. Taylor had been trained on the proper procedure, most recently in January of 2005, and was provided a padlock to use. On February 1, he was observed reaching his hand into a machine to clear a jam without first locking out the power. Another employee had locked out power to the same machine. However, an employee is not allowed to work on a machine under another's lock as the other individual may release power to the machine without knowing that the first person is working on it. Mr. Taylor acknowledged that he knew his actions were contrary to the employer's policy. He violated the policy in order to save the time it would take to walk the 15 feet to lock out the machine.

Mr. Taylor had received a written warning and one-day suspension on May 17, 2004 for violating safety standards. He was working above flow-through racks without fall protection. He should have been wearing a harness and lanyard to keep him from falling into the racks if he slipped. Mr. Taylor acknowledged that he knew he was violating procedure by not wearing the required fall protection.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Taylor 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. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Taylor was discharged after his second violation of safety standards. In both instances, he knew he was violating the employer's requirements. After receiving the warning and suspension in May of 2004, he was clearly on notice that violations of safety standards could result in his discharge.

In spite of the warning in May, Mr. Taylor again deliberately and intentionally disregarded the employer's safety standards on February 1. His failure to lock out power to the machine he was working on could have resulted in serious injury. An employer has a vested interest in maintaining a safe work environment and has the right to expect that employees will abide by those procedures intended to secure their safety. Safety violations have the potential of adversely affecting the employer's workers' compensation insurance. Mr. Taylor's repeated safety violations constituted a substantial disregard of the standards he knew the employer expected of him. Accordingly, benefits are denied.

DECISION:

The representative's decision dated March 2, 2005, reference 01, is hereby affirmed. Mr. Taylor 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