

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**STANLEY D JONES**  
Claimant

**APPEAL NO. 09A-UI-01544-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 01/04/09 R: 12  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
Section 96.6-2 – Timely Appeal

**STATEMENT OF THE CASE:**

Stanley D. Jones filed an appeal from an unemployment insurance decision dated January 23, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held February 19, 2009, with Mr. Jones participating. Human Resources Manager Will Sager participated for the employer, Tyson Fresh Meats, Inc. Exhibit D-1 was admitted into evidence.

**ISSUES:**

Has the claimant filed a timely appeal?

Was the claimant discharged for misconduct in connection with his employment?

**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: Stanley D. Jones was employed as a production worker by Tyson Fresh Meats, Inc. from April 8, 2008, until he was discharged December 8, 2008. The incident leading to his discharge occurred on December 5, 2008. Mr. Jones went through the cafeteria line without a tray. In one hand he carried a plate of food, while in his other hand he carried a cup of ice. He also picked up an energy drink, which he put in his pocket. As he approached the cash register, before he had the opportunity to retrieve the drink from his pocket, he was accused of theft. The accusation led to his discharge. Mr. Jones had not intended to take the drink.

Mr. Jones did not receive the fact-finding decision dated January 23, 2009, that disqualified him for benefits. Late in the afternoon of February 2, 2009, Mr. Jones, now living in Illinois, contacted Iowa Workforce Development. He then learned of the adverse decision. He filed an appeal by fax the following day.

## REASONING AND CONCLUSIONS OF LAW:

The first question is whether the administrative law judge has jurisdiction to rule on the merits of this case. While Iowa Code section 96.6-2 gives parties only ten days from the date of a fact-finding decision to file an appeal, a provision in the Iowa Administrative Code, 871 IAC 24.35, allows additional time if the delay is the fault of the U.S. Postal Service or Iowa Workforce Development. Mr. Jones testified without contradiction that he did not learn of the adverse decision until late in the day on February 2, 2009. He filed his appeal by fax the following morning. Under these circumstances, the administrative law judge accepts the appeal as timely.

The remaining issue is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Only Mr. Sager, the human resources manager, was called to testify. None of the cafeteria staff provided evidence. Mr. Sager's hearsay account of the events leading to the discharge was contradicted by Mr. Jones' sworn, first-hand testimony. The administrative law judge concludes that the evidence does not establish that Mr. Jones intended to steal from the company cafeteria. No disqualification may be imposed.

**DECISION:**

The unemployment insurance decision dated January 23, 2009, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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