

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEMETRIUS A RUSSELL
Claimant

APPEAL NO. 08A-UI-06083-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 06/01/08 R: 03
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Demetrius Russell filed an appeal from a representative's decision dated June 30, 2008, reference 01, which denied benefits based on his separation from Tyson Fresh Meats, Inc. (Tyson). Due notice was issued scheduling a hearing on September 29, 2008 in Waterloo, Iowa. Neither Mr. Russell nor Tyson appeared for the hearing.

ISSUE:

At issue in this matter is whether Mr. Russell was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Russell was employed by Tyson from March 26, 2007 until June 5, 2008 as a full-time production worker. He became separated from the employment because the employer presumed he had quit due to leaving work early without personally checking with a supervisor.

Both Mr. Russell and his roommate left work early on a night prior to June 5. The roommate notified the supervisor that they were both leaving because their home had been broken into. When he returned to work, Mr. Russell was suspended and then notified of his discharge on June 5, 2008.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the employer initiated Mr. Russell's separation when he was not allowed to resume working. Because it was initiated by the employer, the separation is considered a discharge. 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).

The employer did not participate in the fact-finding interview held on June 27, 2008. The only information the employer had provided was the protest, which indicated that Mr. Russell was considered to have voluntarily quit by walking off the job. Mr. Russell's statement during the fact-finding interview was that his roommate, also a coworker, had notified the supervisor that both were leaving. Neither party participated in the hearing to provide sworn testimony in support of their position. However, pursuant to Iowa Code section 96.6(2), the employer had the burden of proving that Mr. Russell should be disqualified from receiving job insurance benefits under Iowa Code section 96.5.

In light of Mr. Russell's statement that his roommate notified their supervisor that they were leaving, the employer's bare, written assertion that he walked off the job is not sufficient to establish disqualifying misconduct. Since the parties disagree as to whether there was notice and since the employer had the burden of proof, any doubt will be resolved in Mr. Russell's favor. Although he may have used poor judgment in not speaking personally with the supervisor, he had a good-faith belief that appropriate notice was given by his roommate. An isolated instance of poor judgment is not considered misconduct within the meaning of the law. 871 IAC 24.32(1). For the reasons cited herein, the administrative law judge concludes that the employer has failed to satisfy its burden of proving the Mr. Russell should be disqualified from receiving benefits. As such, benefits are allowed.

DECISION:

The representative's decision dated June 30, 2008, reference 01, is hereby reversed. Mr. Russell was discharged by Tyson but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs