

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

ISAAC J MOELLERS  
136 EARL ST #11  
EVANSDALE IA 50707

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

Appeal Number: 05A-UI-02265-CT  
OC: 02/06/05 R: 03  
Claimant: Appellant (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Isaac Moellers filed an appeal from a representative's decision dated March 3, 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 22, 2005. Mr. Moellers participated personally and Exhibit A was admitted on his behalf. The employer did not respond to the notice of hearing.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Moellers was employed by Tyson from December 23, 2003 until February 11, 2005 as a full-time production worker. He was discharged when he accumulated more attendance points than allowed by the employer's policies. The final event was on February 6 when Mr. Moellers was late reporting to work. He was late because he has a sleeping disorder which caused him to oversleep. He had notified the employer of his sleeping disorder within the first two months of his employment.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Moellers 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). 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 to work is considered a limited absence from work.

The employer did not participate in the hearing to provide specific details concerning Mr. Moellers' attendance. The evidence of record establishes only the tardiness of February 6. Inasmuch as it was due to a medical condition, it was not an act of misconduct. Since the employer has not submitted evidence of other absences, the employer has failed to establish excessive unexcused absenteeism. Accordingly, benefits are allowed.

#### DECISION:

The representative's decision dated March 3, 2005, reference 01, is hereby reversed. Mr. Moellers was discharged by Tyson but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf