

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

JESUS J MACIAS  
709½ RANDOLF  
WATERLOO IA 50702

TYSON FRESH MEATS INC  
C/O TALX – UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-04566-SWT  
OC: 03/20/05 R: 03  
Claimant: Respondent (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  
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 22, 2004, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 20, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Rosa Maria Paramo-Ricoy. Dave Duncan participated in the hearing on behalf of the employer. During the hearing, the claimant stated that he had an attorney but answered no when asked if the attorney was to be called for the hearing. The claimant had only listed his name and phone number when he provided his contact information for the hearing.

#### FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from June 22, 2004, to March 21, 2005. The claimant was informed and understood that under the employer's work rules, insubordination toward a supervisor and the use of abusive language toward employees was prohibited. The claimant had been warned on January 25, 2005, for not following safety procedures when using a whizzer knife. He was counseled on February 2, 2005, about conflicts with employees. On February 4, 2005, he was warned about not following his supervisor's instructions.

On March 18, 2005, the claimant was on crutches and was assigned light-duty work in the box shop. There was no chair in the work area so the claimant started to drag a folding chair to the box shop. He became frustrated at trying to drag the chair while he was on crutches, so he threw the chair near where he was supposed to work. The chair hit the rail and then the floor. Another worker was near the area. She told the claimant that he should not be throwing chairs. The claimant responded, "Don't fuck with me, you're not my supervisor." The claimant continued to yell and direct profanity at the employee. The employee left and reported what had happened to a supervisor. The supervisor told the claimant that he needed to go to the cafeteria. The claimant refused and insisted the supervisor who was speaking to him was not his supervisor and he did not have to obey him. Later, the claimant's direct supervisor asked the claimant to go to the cafeteria, and he complied.

When the claimant was interviewed about the incident, he agreed that he had thrown the folding chair and had said, "Don't fuck with me" to the coworker. The employer placed the claimant on suspension on March 18, 2005. After considering the claimant's past disciplinary record, the employer discharged the claimant on March 21, 2005, for throwing the chair, using profanity toward a fellow employee, and being insubordinate to a supervisor.

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 20, 2005. The claimant filed for and received a total of \$1,122.00 in unemployment insurance benefits for the weeks between March 20 and April 23, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant's conduct violated a written work rule and was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The claimant admitted in the hearing that he had thrown the folding chair and directed profanity at a coworker. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$1,122.00 in unemployment insurance benefits for the weeks between March 20 and April 23, 2005.

DECISION:

The unemployment insurance decision dated June 22, 2004, reference 03, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$1,122.00 in unemployment insurance benefits, which must be repaid.

saw/pjs