

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

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

Appeal Number: 05A-UI-04212-SWT
OC: 03/20/05 R: 12
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, 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
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 11, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 13, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Maria Fuentes. Eva Garcia participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from January 2, 2001, to March 2, 2005. The claimant was informed and understood that under the employer's work rules, falsification of records was grounds for termination. The claimant had been warned regarding his absenteeism.

On February 25, 2005 the claimant took his son to the clinic because he was ill. He obtained a doctor's statement that stated the claimant had brought his son to the clinic and his son was examined by a doctor on February 25, 2005.

The claimant was scheduled to work from 6:00 a.m. to approximately 3:00 p.m. on February 26, 2005. The claimant left work at approximately 9:30 a.m. after receiving a phone call stating that his son was still sick. The claimant received permission from his supervisor to leave work but was informed that he was expected to return to work with the doctor's excuse. When the claimant arrived at home, his son's condition had stabilized and the claimant did not take him for medical treatment. The claimant changed the date on the medical slip from the previous day to reflect that the doctor had seen his son on February 26, 2005, which was untrue. When the claimant reported to work on February 28, he turned in the altered medical excuse to the employer. The alteration was noticed, and the doctor's office was contacted on March 1, 2005. Someone in the doctor's office confirmed the fact that the claimant's son had been seen on February 25, not February 26.

On February 2, 2005, the claimant was confronted with the discrepancy. At first the claimant denied altering the medical excuse. Later the claimant admitted that he had altered the medical excuse but had done so because the date of the office visit was incorrect. The claimant misrepresented information to the employer to cover up his dishonesty.

On March 2, 2005, the employer discharged the claimant for misrepresenting information on the medical form and when questioned about the medical form by his supervisor.

The claimant filed for and received a total of \$1,542.00 in unemployment insurance benefits for the weeks between March 20 and April 30, 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 violation of a known work rule 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

Since this decision disqualifies the claimant from receiving benefits, the claimant was overpaid \$1,542.00 in unemployment insurance benefits for the weeks between March 20 and April 30, 2005.

DECISION:

The unemployment insurance decision dated April 11, 2005, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$1,542.00 in unemployment insurance benefits, which must be repaid.

saw/s