

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

BANG P BOL
1501 N 48TH ST #2
OMAHA NE 68104-5151

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

Appeal Number: 06A-UI-03692-CT
OC: 03/05/06 R: 01
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 for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (Tyson) filed an appeal from a representative's decision dated March 21, 2006, reference 01, which held that no disqualification would be imposed regarding Bang Bol's separation from employment. After due notice was issued, a hearing was held by telephone on April 20, 2006. Mr. Bol participated personally. The employer participated by Mike LeFevre, Human Resources Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Bol was employed by Tyson from May 27, 2003 until March 3, 2006 as a full-time production worker. On March 3, he was presented with a written warning based on an allegation that he was late returning from break. Rather than sign the warning, Mr. Bol asked the employer to speak with individuals who could verify that he did not take an extended break. He was told that witnesses could speak on his behalf if he appealed the warning through the dispute resolution process available with the employer. The employer declined to conduct a dispute resolution meeting at that time and Mr. Bol continued to refuse to sign the warning. He was told that he could sign the document, indicate his disagreement, and pursue an appeal or he could quit. Mr. Bol opted to leave.

Mr. Bol has received a total of \$2,022.00 in job insurance benefits since filing his claim effective March 5, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Bol was separated from employment for any disqualifying reason. The employer characterized the separation as a voluntary quit. In order to establish a quit, there must be an intent to sever the employment relationship accompanied by some overt act of carrying out that intent. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). There was no evidence that Mr. Bol desired to leave Tyson. In fact, he tried to keep his job by asking the employer to verify that he had not taken longer than allowed for his break. It was the employer's decision that he could not remain in the employment unless he signed the warning presented to him on March 6. For the above reasons, it is concluded that the employer initiated the separation. Therefore, it 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). Mr. Bol was discharged because of his refusal to sign a written warning acknowledging that he had received it. The administrative law judge appreciates that he did not agree with the factual basis for the warning. However, he knew he had the right to appeal the warning and have witnesses speak on his behalf. It is possible the warning might have been withdrawn after the dispute resolution proceedings. The refusal to sign a written warning to acknowledge its receipt constitutes disqualifying misconduct. Green v. Iowa Department of Job Service, 299 N.W.2d 651 (Iowa 1980). For the above reasons, Mr. Bol is disqualified from receiving job insurance benefits.

Mr. Bol has received job insurance benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated March 21, 2006, reference 01, is hereby reversed. Mr. Bol was discharged for misconduct in connection with his employment. Benefits are withheld until

such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Bol has been overpaid \$2,022.00 in job insurance benefits.

cfc/tjc