

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

TINA M DUNLAP
APT 2
225 S 8TH
BURLINGTON IA 52601

TYSON FRESH MEATS INC
C/O TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 06A-UI-01328-DWT
OC: 06/19/05 R: 04
Claimant: Respondent (1/R)

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

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's January 25, 2006 decision (reference 08) that concluded Tina M. Dunlap (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 21, 2006. The claimant participated in the hearing. Eva Garcia, the community liaison, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 15, 2005. The employer hired the claimant to work full time as a production worker. The first 90 days of employment, the claimant was a probationary employee.

The claimant's last day of work was December 29, 2005. The claimant went to the emergency room on January 3. The claimant contacted the employer the week of January 1 to let the employer know she was unable to work as scheduled. On Friday, January 6, the claimant talked to the human resource manager to let him know she would be at work on Monday. The claimant also asked if she could be transferred to another department because the kill floor made her physically ill. The employer told the claimant she did not need to worry about a transfer because she was discharged for attendance problems.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant after concluding she was not a reliable and dependable employee during her probation. The claimant's attendance problems occurred as the result of medical problems the week of January 1. The employer had compelling business reasons for discharging the claimant. As a probationary employee, the employer expected the claimant to work as scheduled. When the claimant was unable to work as scheduled, the employer had a right to question her dependability. The evidence does not establish that the claimant intentionally and substantially failed to work as scheduled. The claimant did not commit work-connected misconduct. As of January 8, 2006, the claimant is qualified to receive unemployment insurance benefits.

The employer is not currently a base period employer. During the claimant's current benefit year, the employer's account will not be charged.

Since the claimant started working for the employer and did not report any wages for the weeks ending November 19 through December 3, 2005, the issues of whether the claimant earned wages, reported wages correctly or has been overpaid for any of these weeks is remanded to the Claims Section to investigate and issue a written decision.

DECISION:

The representative's January 25, 2006 decision (reference 08) is affirmed. The employer discharged the claimant, a probationary employee, for business reasons that do not constitute work-connected misconduct. As of January 8, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. During the claimant's benefit year, the employer's account will not be charged. The issues of whether the claimant earned wages, reported wages and has been overpaid for the weeks ending November 19 through December 3, 2005 is remanded to the Claims Section to investigate and issue a written decision.

dlw/tjc