

**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**

**OSMOND D BELL  
2902 IOWA ST  
PERRY IA 50220**

**TYSON FRESH MEATS INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-01112-CT  
OC: 01/01/06 R: 02  
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 for Misconduct  
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. filed an appeal from a representative's decision dated January 20, 2006, reference 01, which held that no disqualification would be imposed regarding Osmond Bell's separation from employment. After due notice was issued, a hearing was held by telephone on February 15, 2006. Mr. Bell participated personally. The employer participated by Tom Barragan, Employment Manager, and Mike Cleaver, Training Coordinator. The hearing was recessed pending receipt of additional evidence from Mr. Bell. The hearing reconvened on May 11, 2006. The employer participated by Tom Barragan. Mr. Bell did not respond to the notice of hearing until after the hearing record was closed and, therefore, did not participate.

#### 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. Bell was employed by Tyson from March 14 until December 23, 2005 as a full-time production worker. On December 22, he was questioned regarding his absence of December 21. Mr. Bell indicated he had taken his son to the doctor because of his asthma. The employer requested verification of the doctor's visit. The note provided was questionable and, therefore, the employer contacted the doctor's office. The doctor's office indicated that the note had not been written by Dr. Ash as indicated and that Dr. Ash would not have provided a statement on behalf of a different doctor.

Mr. Bell was given another opportunity to provide verification that he was with his son for a medical appointment on December 21. The only thing he could provide was a prescription that had been filled on December 22. The employer believed Mr. Bell had created the doctor's statement dated December 21, 2005 using a doctor's note he had received in the past. The note was purportedly signed by Dr. Ash but his name does not appear on the letterhead of the prescription pad on which the note is written. The note of December 21 indicates Mr. Bell must "say" home with his son, rather than "stay" home with his son. As a result of the falsification, Mr. Bell was discharged on December 23, 2005.

Mr. Bell has received a total of \$5,928.20 in job insurance benefits since filing his claim effective January 1, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Bell 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). Mr. Bell was discharged for presenting the employer with a fraudulent doctor's excuse. The doctor's office denied that Mr. Bell was seen on December 21. The note presented to the employer is suspicious. The first five lines are written as one run-on sentence rather than three individual sentences and the note contains a misspelling. One would not expect a doctor to misspell the word "stay." The above factors, along with the doctor's denial of having written the statement, satisfies the administrative law judge that the note was a fabrication.

Mr. Bell attempted to provide a prescription as proof of having seen the doctor on December 21. A prescription may be refilled at a pharmacy without an individual having had a recent visit with the doctor. This is more likely where the medical condition is an on-going one, such as asthma, where the individual will need medication on a routine and continuing basis. Therefore, the fact that a prescription was filled on December 22 does not establish that Mr. Bell was with his son at a doctor's appointment on December 21.

Mr. Bell deliberately and intentionally gave the employer false information regarding his absence of December 21. He owed his employer the duty of honesty but breached that obligation. It is concluded, therefore, that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied. Mr. Bell has received 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 January 20, 2006, reference 01, is hereby reversed. Mr. Bell was discharged by Tyson 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. Bell has been overpaid \$5,928.20 in job insurance benefits.

cfc/pjs