

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

TRAVIS A FOX
119 – 13TH AVE NE 11
OELWEIN IA 50662

TYSON RETAIL DELI MEATS INC
C/O TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 632166-0283

Appeal Number: 04A-UI-10275-DWT
OC 08/29/04 R 04
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 are 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:

Tyson Retail Deli Meats, Inc. (employer) appealed a representative's September 14, 2004 decision (reference 01) that concluded Travis A. Fox (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 October 13, 2004. The claimant participated in the hearing. Julie Miller, a human resource assistant, 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.

ISSUES:

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

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on June 9, 2003. He worked as a full-time production worker. The employer's attendance policy informs employees that when an employee accumulates 13.5 attendance points in a rolling calendar year, the employer will discharge the employee for excessive absenteeism.

During the course of his employment, the claimant usually got to work around 5:30 a.m. to set up his machine so production would be ready to go at 6:00 a.m. The employer notified the claimant on November 14, 2003, he had accumulated three attendance points. On March 10, 2004, the claimant received information that he had accumulated six attendance points. On June 24, the employer gave the claimant a notice he had accumulated 10.5 attendance points. On August 11, the claimant received an attendance point for failing to properly notify the employer he would be late for work. The claimant received another attendance point when he stayed home with a sick child August 13 through 18, 2004. As of August 19 or 20, the claimant knew his job was in jeopardy because he had 12.5 attendance points.

On August 21, the claimant was scheduled to work. The night before the claimant did not feel well, but he did not contact the employer to report he was ill and unable to work. On August 21, 2004, the claimant overslept and did not get up until noon. Since the claimant was already hours late for work, he did not contact the employer. The employer assessed the claimant three points for not calling or reporting to work on August 20, 2004.

On August 24 when the claimant reported to work, the employer discharged him for excessive absenteeism. The claimant had accumulated 15.5 attendance points in a rolling calendar year.

The claimant established a claim for unemployment insurance benefits during the week of August 29, 2004. The claimant filed claims for the weeks ending September 4 through 18, 2004. He received his maximum weekly benefit amount of \$310.00 during each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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 law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or

other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew his job was jeopardy on August 19 or 20, 2004. The claimant overslept on August 21. Even though the claimant may have been sick the evening of August 20, he failed to take reasonable steps to notify the employer he was unable to work. He also failed to make sure he got up in time on August 21 either to report to work or notify the employer he was unable to work. The evidence establishes the claimant's repeated failure to work as scheduled in conjunction with his failure to properly the notify the employer he was unable to work on August 21 amounts to an intentional disregard of the employer's interests. The employer discharged the claimant for work-connected misconduct. Therefore, as of August 29, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending September 4 through 18, 2004. The claimant has been overpaid \$930.00 in benefits he received for these weeks.

DECISION:

The representative's September 14, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of August 29, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending September 3 through 18, 2004. The claimant has been overpaid and must repay \$\$930.00 in benefits he received for these weeks.

dlw/pjs