

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

KHAMTANH T LENG
210 – 13TH PL
DENISON IA 51442

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

Appeal Number: 04A-UI-12516-AT
OC: 10-24-04 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 Overpayment of Benefits

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. filed a timely appeal from an unemployment insurance decision dated November 15, 2004, reference 01, which allowed benefits to Khamtanh Leng. After due notice was issued, a telephone hearing was held December 15, 2004 with Ms. Leng participating with the assistance of Interpreter Tom Baccam. Human Resources Manager Jeff Houston, Quality Control Technician Kathi Nebola and Safety Committee Member Bruce Meyer participated for the employer. Employer Exhibits A through G were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Khamtanh T. Leng was employed by Tyson Fresh Meats, Inc. from March 23, 1993 until she was suspended on October 21, 2004 and discharged following investigation on October 26, 2004. She last worked as a general laborer in the tripe room. On October 21, 2004 Ms. Leng climbed to the very top of a six-foot ladder to release some boxes caught in a box shute. This was a violation of company safety procedures. Ms. Leng did not climb down immediately when asked to do so. She had received a three-day suspension in February 2004 for reaching into the tripe chill tank without first using proper lock-out procedures.

Company safety policies are explained to employees during orientation and annually in safety meetings. Ms. Leng would have attended approximately nine of the safety meetings during her employment. She has received unemployment insurance benefits since filing a claim effective October 24, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that Ms. Leng was discharged for misconduct in connection with her work. It does.

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).

Ms. Leng's testimony was to the effect that she was not on the very top of the ladder and that, in any event, other employees did the same. The administrative law judge does not find that testimony to be credible. The employer provided two eyewitnesses to the final incident, both of whom placed Ms. Leng on top of the ladder. Mr. Meyer, a 19 year employee and member of the safety committee, also testified credibly that he had never observed employees standing on the top of the ladder as had Ms. Leng. The evidence persuades the administrative law judge that Ms. Leng repeatedly violated company safety procedures. Benefits must be withheld.

Ms. Leng has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated November 15, 2004, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$2,192.00.

tjc/b