

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

JODY C MYERS
206 – 2ND ST SW
WAUCOMA IA 52171-9714

TYSON RETAIL DELI MEATS INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-02173-DWT
OC: 01/08/06 R: 04
Claimant: Appellant (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

STATEMENT OF THE CASE:

Jody C. Myers (claimant) appealed a representative's February 14, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Tyson Retail Deli Meats, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 5, 2006. The claimant participated in the hearing. Brooke Salger, the human resources manager, appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two were offered and admitted as evidence. 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 for the employer on January 18, 2005. The claimant worked as a full-time production worker. The claimant knew that in accordance with the employer's attendance policy an employee would be discharged if the employee accumulated 14 attendance points. When an employee notifies the employer 30 minutes prior to a scheduled shift, the employer considers the employee to have properly notified the employer that the employee is unable to work as scheduled. If an employee is ill for three days, the employer only assesses the employee one point. If the employee is sick for four or more days, the employer requires a doctor's excuse for the employee to receive only one attendance point for the duration of the illness.

On December 27, the claimant left work early because he was ill. The employer did not assess the claimant any points on December 27. On December 28, the claimant called in sick and received one attendance point. The claimant also called in sick on December 29 and 30. In accordance with the employer's policy, the claimant only received one point for his absences on December 28, 29 and 30. On December 29, the claimant received notice he had accumulated 12.5 attendance points. The claimant knew if he obtained a doctor's statement, the employer would only give him one attendance point for the duration of an illness that lasted more than three working days. (Employer's Exhibit Two)

The claimant reported to work ill on January 3, 2006. When the claimant asked if he could leave work, his supervisor gave him permission to go home. The claimant received a half point for leaving work early on January 3, 2006. The claimant called in sick on January 4, 5 and 9. The employer considered these absences as an on-going absence and would have only assessed the claimant one attendance point for the days he was unable to work December 27 through January 9, if the claimant had provided a doctor's statements. The claimant did not go to a doctor when he was ill. As a result, the employer assessed the claimant an attendance point for each day, January 4, 5 and 9. (Employer Exhibit One)

When the claimant reported to work on January 10, he had accumulated 16 attendance points. The employer discharged the claimant for excessive absenteeism.

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. 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 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 facts establish the claimant was ill and unable to work as scheduled December 27 through January 10, 2006. While it is troublesome that the claimant did not seek medical treatment for his illness, the fact remains he was unable to work because he was ill and he properly notified the employer of this fact. The claimant did not intentionally and substantially disregard the employer's interests.

The employer established business reasons for discharging the claimant, but the claimant did not commit work-connected misconduct. As of January 8, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements.

DECISION:

The representative's February 14, 2006 decision (reference 01) is reversed. The employer had compelling business reasons for discharging the claimant, but the claimant did not commit work-connected misconduct. As of January 8, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs