

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

SOMSAK PHIAKHAM  
514 SUPERIOR ST  
STORM LAKE IA 50588

TYSON FRESH MEATS INC  
c/o FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS 63166-283

Appeal Number: 05O-UI-00075-JTT  
OC: 09/05/04 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.

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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 Overpayment of Benefits

STATEMENT OF THE CASE:

Tyson foods filed a timely appeal from the September 28, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 20, 2005. The employer did participate through Sara Mendoza, Human Resources. The claimant did not participate. At the time of the hearing, the claimant was not available at the telephone number he had provided for the purpose of participating in the hearing: 712-213-0725. The administrative law judge made three attempts to reach the claimant at the telephone number he had provided. The administrative law judge was unable to leave a message for the claimant, because there was no answering machine or voice-mail service available at the telephone number the claimant provided. The administrative law judge's attempts to contact the claimant are recorded on an audiocassette tape.

FINDINGS OF FACT:

At the time of the hearing, the employer elected to rely upon the testimony that had previously been submitted in this matter at the hearing held on November 2, 2004. The Findings of Fact set forth in the decision dated November 4, 2004 are adopted by this administrative law judge and incorporated herein by this reference.

REASONING AND CONCLUSIONS OF LAW:

The Reasoning and Conclusions of law set forth in the decision dated November 4, 2004 are adopted by this administrative law judge and incorporated herein by this reference.

DECISION:

The Agency representative's decision dated September 28, 2004, reference 01, is reversed. The employer discharged the claimant for misconduct in connection with his employment. Accordingly, the claimant is disqualified from receiving unemployment insurance benefits as of September 5, 2004. The claimant is disqualified for benefits until he had worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he meets all other eligibility requirements. The employer's account will not be charged. The claimant has been overpaid and must repay \$2,170.00 for benefits he received during the benefit weeks ending September 11 through October 23, 2004.

jt/sc