

**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**

**PARISH T ROSS
545 DAWSON ST
WATERLOO IA 50703**

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

**Appeal Number: 04A-UI-08680-CT
OC: 07/11/04 R: 03
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (Tyson) filed an appeal from a representative's decision dated August 3, 2004, reference 01, which held that no disqualification would be imposed regarding Parish Ross' separation from employment. After due notice was issued, a hearing was held by telephone on September 2, 2004. Mr. Ross participated personally. The employer participated by Dave Duncan, Human Resources Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Ross was employed by Tyson from March 17, 2003 until June 25, 2004 as a full-time production worker. At the time of separation, he was assigned to work in the stick pen monitoring hogs being slaughtered. He was discharged based on an allegation that he was sleeping on the job on June 24. Mr. Ross was sitting on the stairs when observed by a supervisor who believed he was sleeping. During the employer's investigation, other employees reported that Mr. Ross slept on the job. He had not previously been disciplined for sleeping on the job.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Ross 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 in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Ross was discharged based on an allegation that he was sleeping on the job, an allegation he denied under oath. The employer did not present testimony from any individual who observed him sleeping on June 24 or any other date. Although the employer's hearsay evidence is admissible, it does not, in this case, overcome Mr. Ross' sworn, credible denial that he was sleeping at work.

For the reasons stated herein, the administrative law judge concludes that the employer has failed to establish that Mr. Ross was sleeping on the job. As this was the only misconduct alleged, it is concluded that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated August 3, 2004, reference 01, is hereby affirmed. Mr. Ross was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf