

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

JUAN C CHAVEZ
227 E 10TH ST
WATERLOO IA 50703

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

Appeal Number: 06A-UI-04856-DWT
OC: 03/26/06 R: 03
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:

Juan C. Chavez (claimant) appealed a representative's May 2, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Tyson Fresh 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 May 25, 2006. The claimant participated in the hearing. Ike Rocha interpreted the hearing. Jerome Rinkins, a general supervisor, 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.

ISSUE:

Did the claimant commit work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 22, 2005. At that time the claimant's authorization to work card in the United States expired on February 3, 2006.

The employer sent the claimant letters 120 days, 90 days, 60 and 30 days prior to February 3, 2006, reminding him when his employment authorization card expired and that he needed to apply for permission to continue working in the United States. The claimant filed the necessary paperwork three months before his employment authorization card expired.

As a result of some pending legal issues, the claimant's application for another authorization to work card was delayed. When the claimant did not have a current employment authorization card, the employer terminated the claimant's employment on February 6, 2006. If an employee receives his employment authorization within the following 30 days, the employer reinstates the employee. The claimant received his work authorization in March and it was effective as of March 22, 2006. The employer did not reinstate the claimant because he did not receive his authorization to work card within 30 days or by March 5, 2006.

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 employer had no choice but to discharge the claimant on February 6, 2006, because he could not legally work for the employer without a valid employment authorization permit. Therefore, the employer established compelling business reasons for discharging the claimant. Since the claimant applied for another employment authorization permit three months before his first one expired, he had no control as to when his application would be processed. While the employer's rules take into consideration some delay in processing a permit, the claimant's application was not processed within that time frame. The claimant had no control as to how long the process would take. Even if the claimant should have realized his application would take longer because of some legal issues, the claimant did not intentionally fail to get another employment authorization permit before his first one expired. The facts do not establish that

the claimant committed work-connected misconduct. As of March 26, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements.

DECISION:

The representative's May 2, 2006 decision (reference 01) is reversed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of March 26, 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/kkf