

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

BETTY B FAYEH
Claimant

APPEAL NO. 08A-UI-06911-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 06/22/08 R: 02
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.6(2) – Timeliness of Appeals/Finality of Decisions

STATEMENT OF THE CASE:

Betty Fayeh filed an appeal from a representative's decision dated July 18, 2008, reference 01, which denied benefits based on a June 25, 2008 separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on August 27, 2008. Ms. Fayeh participated personally and was assisted by Willie Dweh. The employer participated by Terry Carmichael, Employment Manager.

ISSUE:

At issue in this matter is whether Ms. Fayeh's separation from Tyson has been previously adjudicated. There is also an issue concerning the timeliness of her appeal.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: The representative's decision that is the subject of this appeal was mailed to Ms. Fayeh at her address of record on July 18, 2008. She received the decision but, because she cannot read English well, she did not understand that she needed to file an appeal. By the time she had the notice translated, the July 28, 2008 deadline had already passed. Ms. Fayeh filed her appeal on July 29, 2008 at her local Workforce Development office.

Ms. Fayeh was employed by Tyson from November 1, 2004 until March 3, 2007. Her last day at work was February 14, 2007. She continued to report absences through February 19, 2007. When she failed to report for work or contact the employer thereafter, she was terminated effective March 3, 2007. Ms. Fayeh has not performed any services for Tyson after February 14, 2007.

Ms. Fayeh filed a claim for job insurance benefits effective April 1, 2007 and listed Tyson as her last employer. On April 19, 2007, Workforce Development issued a decision, reference 01, holding that Ms. Fayeh's discharge from Tyson was not for any disqualifying reason. The decision became final in the absence of a further appeal by Tyson. Ms. Fayeh filed her current

claim effective June 22, 2008. She incorrectly listed Tyson as her last employer and June 25, 2008 as her last day of work for Tyson.

REASONING AND CONCLUSIONS OF LAW:

Although there is an issue concerning the timeliness of Ms. Fayeh's appeal, the administrative law judge considers the issue moot. She had only one period of employment with Tyson, the period that ended effective March 3, 2007. The issue of her separation from Tyson had already been adjudicated by Workforce Development on April 19, 2007 on a prior claim. Because the April 19, 2007 decision had become final, the agency was without jurisdiction to re-adjudicate the separation. A decision was issued concerning a June 25, 2008 separation only because Ms. Fayeh incorrectly indicated she had worked for Tyson in 2008.

Inasmuch as the issue of her separation from Tyson had already been adjudicated, Ms. Fayeh cannot be penalized for filing a late appeal from a decision that should not have been issued in the first place. Because the April 19, 2007 decision allowing benefits to Ms. Fayeh was not appealed by Tyson, it became a final determination and the administrative law judge is without legal authority to change the allowance.

DECISION:

The representative's decision dated July 18, 2008, reference 01, is hereby reversed. The issue of Ms. Fayeh's separation from Tyson was adjudicated on a prior claim and remains in effect in the absence of a further appeal by the employer. Benefits are allowed, provided Ms. Fayeh satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css