

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

JOHN V DEMAN  
314 PROSPECT ST  
ALTA IA 51002-1423

TYSON FRESH MEATS INC  
c/o TALK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-03988-CT  
OC: 03/12/06 R: 01  
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, 4<sup>th</sup> 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 06.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

John Deman filed an appeal from a representative's decision dated March 29, 2006, reference 01, which denied benefits based on his separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on April 28, 2006. Mr. Deman participated personally. The employer did not provide the name and telephone number of a witness to be contacted for the hearing. The employer submitted a written withdrawal on April 21, 2006. However, it was not the employer's appeal to withdraw.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Deman was employed by Tyson from July of 1995 until March 8, 2006. He was last employed full time in maintenance. He was discharged because of his attendance. The employer tracks attendance on a point system. An individual is subject to discharge when he accumulates 14 attendance points.

Mr. Deman's last attendance infraction was approximately two weeks before his discharge when he was late due to oversleeping. He had been warned about his attendance but continued to miss time from work. Attendance was the sole reason for his discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Deman 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. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Absences that are for reasonable cause and are properly reported are considered excused absences. The employer's burden included establishing that Mr. Deman's discharge was caused by a current incident of unexcused absenteeism. See 871 IAC 24.32(8).

Mr. Deman testified that his last attendance infraction was two weeks before his discharge. The employer has not submitted attendance records to establish to the contrary. The employer did not participate in the hearing to explain why there was a delay in discharging Mr. Deman. For the above reasons, the administrative law judge concludes that the employer has failed to establish a current act of misconduct. Accordingly, no disqualification is imposed.

#### DECISION:

The representative's decision dated March 29, 2006, reference 01, is hereby reversed. Mr. Deman was discharged by Tyson but a current act of misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/tjc