

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

LEONARDO MARQUEZ
1014 LEAVITT ST #2
WATERLOO IA 50702

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

Appeal Number: 05A-UI-03922-CT
OC: 03/06/05 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 April 4, 2005, reference 01, which held that no disqualification would be imposed regarding Leonardo Marquez' separation from employment. After due notice was issued, a hearing was held by telephone on May 6, 2005. Mr. Marquez participated personally. The employer participated by Dave Duncan, Personnel Manager. Rosie Paramo Ricoy participated as the interpreter.

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. Marquez was employed by Tyson from June 1, 2004

until March 10, 2005 as a full-time production laborer. He was discharged because he received four warnings within a one-year period.

Mr. Marquez received a counseling on September 8, 2004 because he was not wearing personal protective equipment. On December 21, he received a written warning because he was not wearing the protective gloves issued by the company. Mr. Marquez received another written warning on December 27, 2004 when he reached into a machine to sharpen a blade. In addition to the blade, there were other moving parts inside the machine where he reached. He knew he was not authorized to repair the machine or to sharpen the blade. Power to the machine was not locked out at the time.

The final incident that caused the discharge occurred on March 9, 2005. Mr. Marquez felt a coworker was not performing his job properly and left his work station to confront the other employee. The two became involved in an argument. As a result, Mr. Marquez was discharged on March 10, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Marquez 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). There must be a current act of misconduct to sustain a disqualification from benefits. In the case at hand, the final incident that triggered the discharge was the argument of March 9 between Mr. Marquez and a coworker. It is unreasonable to expect employees to be docile and well-mannered at all times. The argument with the coworker did not constitute a substantial disregard of the employer's standards. The fact that Mr. Marquez left his work station was not so substantial a deviation from the employer's standards as to constitute an act of misconduct. For the above reasons, it is concluded that the conduct of March 9, 2005 did not constitute misconduct.

The next most prior disciplinary action was on December 27, 2004. This conduct was too remote in time to be considered a current act in relation to the March 10, 2005 discharge. Inasmuch as a current act of misconduct has not been established, no disqualification is imposed.

DECISION:

The representative's decision dated April 4, 2005, reference 01, is hereby affirmed. Mr. Marquez 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/sc