

**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**

**RAUL CHAVEZ
4137 E NORTH ST
TUCSON AZ 85712**

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

**Appeal Number: 04A-UI-08395-CT
OC: 07/04/04 R: 12
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 July 30, 2004, reference 01, which held that no disqualification would be imposed regarding Raul Chavez' separation from employment. After due notice was issued, a hearing was held by telephone on August 26, 2004. Mr. Chavez participated personally. The employer participated by Mark Campbell, Production Training Manager. Rosie Paramo Ricoy participated as the interpreter. The hearing record was left open pending receipt of a statement from Mr. Chavez' doctor. The statement has been received and the hearing record is now closed.

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. Chavez was employed by Tyson from December 5, 2000 until June 11, 2004 as a full-time production worker. He was discharged because of his attendance.

Mr. Chavez was absent without calling in on February 17, 2004. He was 30 minutes late on April 2, 2004 because he overslept. He was an hour and 45 minutes late on May 17, 2004 because his car broke down. The final absences were from June 7 through 10 when Mr. Chavez was absent due to illness. He saw a doctor in California on June 5 and was diagnosed as having gastroenteritis. He called each day beginning June 7 to report his absences. An individual is subject to discharge if he has more than 14 attendance points. Mr. Chavez had 15.5 points prior to reporting to work on June 11. He did not remain at the workplace on June 11 to speak with the employer as requested. Mr. Chavez had received a written warning on December 3, 2003 concerning his attendance. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Chavez 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). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if he was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences. Moreover, there must be a current act of unexcused absenteeism in relation to the discharge date.

Mr. Chavez' last unexcused absence was on May 17, 2004 when he was an hour and 45 minutes late because of car trouble. This absence was almost one month before the separation and would not, therefore, be a current act in relation to the discharge date. The final absences beginning June 7 are excused as they were for reasonable cause, illness, and were properly reported to the employer. Inasmuch as the final conduct, which caused the discharge was not misconduct, no disqualification may be imposed.

DECISION:

The representative's decision dated July 30, 2004, reference 01, is hereby affirmed. Mr. Chavez was discharged by Tyson but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs