

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

CHAN KHOORN
307 W 9TH ST
STORM LAKE IA 50588

TYSON FRESH MEATS INC
C/O TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 06A-UI-01986-DWT
OC: 01/22/06 R: 01
Claimant: Respondent (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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's February 9, 2006 decision (reference 01) that concluded Chan Khaoorn (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 8, 2006. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Will Sager, the complex human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on May 10, 2005. The claimant worked as a full-time production worker. When employees start their employment, the employer explains the employer's code of conduct. In part, the code of conduct informs employees they will be discharged the first time they misrepresent any material fact.

Prior to December 3, 2005, the claimant did not have an attendance problem. Although the claimant had received a suspension for a safety issue, the claimant's job was not in jeopardy. On December 3, the claimant notified the employer he was ill and unable to work as scheduled. The claimant's supervisor called the claimant's home because the employer needed the combination to the claimant's locker to retrieve some equipment. The female that answered the phone indicated the claimant was at work.

On December 7, the employer talked to the claimant and asked the claimant why he was not at work on December 3. Initially, the claimant indicated he had been sick. Later, the claimant admitted he had not been sick, only tired. The employer discharged the claimant on December 8, 2005, for misrepresenting the reason for his December 3 absence.

The claimant established a claim for unemployment insurance benefits during the week of January 22, 2006. The claimant filed claims for the weeks ending January 28 through February 18, 2006. The claimant received his maximum weekly benefits of \$253.00 for each of these weeks.

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. 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 facts show the claimant intentionally and substantially disregarded the standard of behavior the employer has a right to expect from an employee when he misrepresented the reason he did not report to work on December 3, 2005. While the claimant may have had compelling reasons for misrepresenting the reason for his absence, he committed work-connected misconduct when he did not honestly report why he was not at work this day. As of January 22, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending January 28 through February 18, 2006. The claimant has been overpaid a total of \$1,012.00 in benefits he received for these weeks.

DECISION:

The representative's February 9, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 22, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending January 28 through February 18, 2006. The claimant has been overpaid and must repay a total of \$1,012.00 in benefits he received for these weeks.

dlw/kjw