

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

MARIA C GONZALEZ
1819 WILLIS AVE
PERRY IA 50220

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

Appeal Number: 04A-UI-11619-CT
OC: 10/03/04 R: 02
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 October 19, 2004, reference 01, which held that no disqualification would be imposed regarding Maria Gonzalez' separation from employment. After due notice was issued, a hearing was held by telephone on November 24, 2004. Ms. Gonzalez participated personally. The employer participated by Tom Barragan, Employment 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: Ms. Gonzalez was employed by Tyson from August 28, 2000 until September 20, 2004 as a full-time production worker. She was discharged because of her attendance.

All of Ms. Gonzalez' absences were properly reported and were all due either to her own illness or that of her child. She was three minutes late on June 8, 2004 for unknown reasons. She was two minutes late on September 14, 2004 because she was stopped by security to search her belongings. Security periodically conducts a random search of individuals to make sure that prohibited items are not being brought into the facility. Ms. Gonzalez' final absence was on September 15, 2004 when she was absent due to her son's illness. She had received warnings about her attendance on May 12 and June 21, 2004. She had received an attendance notice on October 9, 2003. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Gonzalez 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 job insurance benefits if she 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. Tardiness is considered a limited absence from work.

The employer's evidence failed to establish excessive unexcused absenteeism within the meaning of the law. All of the absences of a full day are considered excused as they were for reasonable cause, illness, and were properly reported. The tardiness of September 14 is considered excused as it was caused by the employment. On this occasion, Ms. Gonzalez was two minutes late because she was stopped by security personnel. The only possible period of unexcused absenteeism was on June 8 when Ms. Gonzalez was three minutes late. This one event is not sufficient to establish excessive unexcused absenteeism. As such, no disqualification is imposed. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983).

DECISION:

The representative's decision dated October 19, 2004, reference 01, is hereby affirmed. Ms. Gonzalez was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs