

**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**

**DENNIS C BENOIT  
2805 NE 25<sup>TH</sup> ST  
OKLAHOMA CITY OK 73101**

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

**Appeal Number: 05A-UI-00116-SWT  
OC: 11/07/04 R: 12  
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 96.5-2-a – Discharge  
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 30, 2004, reference 01, that concluded he voluntarily left employment without good cause attributable to the employer. A telephone hearing was held on January 21, 2005. The hearing was reopened because the claimant had provided his telephone number to participate in the hearing but the number was not recorded. The reopened telephone hearing was held on February 11, 2005. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. The employer's representative, Randy Schultz, was not available to participate in the hearing.

FINDINGS OF FACT:

The claimant worked for the employer as a production worker from August 3, 2003, to October 18, 2004. After October 18, 2004, the claimant was on an approved vacation. While he was on vacation, the claimant was arrested and jailed. He had a coworker speak with his

supervisor about his situation. The supervisor agreed to hold the claimant's job for him until he was released from jail. The claimant was released from jail on November 5, 2004. He immediately contacted the employer and was told that he had been terminated.

An unemployment insurance decision was mailed to the claimant's last-known address of record on November 30, 2004. The decision concluded the claimant voluntarily quit employment without good cause attributable to the employer and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by December 10, 2004.

The claimant received the decision within the ten-day period for appealing the decision. He filed a written appeal on December 8, 2004, with the Oklahoma Workforce Office. The Oklahoma Workforce Office faxed the written appeal to the Appeals Section but for some reason, the appeal was not received.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last-known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed before the deadline for appealing expired, but for reasons beyond the claimant's control, the appeal was not received. The appeal must be considered timely.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. The agency treated the separation as a voluntary quit, but the preponderance of the evidence indicates that the claimant was granted time off until he was released from jail. The employer terminated the claimant by failing to put him back to work when he was released from jail.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case.

DECISION:

The unemployment insurance decision dated November 30, 2004, reference 01, is reversed. The appeal in this case is deemed timely. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/pjs