

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

DONALD R TURNER
811 MAIN ST
COLUMBUS JUNCTION IA 52738

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

Appeal Number: 04A-UI-01839-CT
OC: 01/11/04 R: 03
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, 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:

Donald Turner filed an appeal from a representative's decision dated February 10, 2004, reference 01, which denied benefits based on his separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on March 11, 2004. Mr. Turner participated personally. The employer did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Turner was employed by Tyson from August 14, 2001

until January 15, 2004 as a full-time maintenance mechanic. His wife also worked for Tyson and, on January 15, he received a call from his wife who was in tears. She was upset because a male coworker had grabbed her breast. His wife's supervisor gave permission for Mr. Turner to come to the workplace to be with his wife.

When Mr. Turner arrived at the workplace, he was stopped at the guard's shack and denied access to the building. Management personnel came to the shack but still refused Mr. Turner entry. Mr. Turner became angry and started screaming at management. He made the comment to one person, "you and me right now, let's get it over with." The employer considered his statement a threat and, therefore, discharged him.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Turner 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). Mr. Turner was discharged because he challenged a member of management to fight. He was angry and upset because he was being denied access to his wife who had just been sexually harassed at work and was in tears. Under the circumstances, Mr. Turner's single, hot-headed incident is not sufficient to establish a deliberate and intentional disregard of the employer's interests or standards. It is concluded, therefore, that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated February 10, 2004, reference 01, is hereby reversed. Mr. Turner was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/b