

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

ERNESTO LUCERO REYES
5702 S 33rd ST
OMAHA NE 68107

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

Appeal Number: 04A-UI-02237-B4T
OC: 01-18-04 R: 01
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

STATEMENT OF THE CASE:

An appeal was filed on behalf of the employer from an unemployment insurance decision dated February 20, 2004, reference 01, that held, in effect, Ernesto Lucero Reyes was discharged from his employment with Tyson Fresh Meats, Inc. on January 22, 2004 for no disqualifiable reason. Unemployment insurance benefits were allowed, provided the claimant was otherwise eligible. A telephone conference hearing was scheduled and held on April 6, 2004, pursuant to due notice. Ernesto Lucero Reyes participated. Rosie Paramo-Ricoy participated as an interpreter. Susan P. Pfeiffer, Human Resources Manager, participated on behalf of the employer and John Meadows, Production Supervisor, participated as a witness on behalf of the employer. Official notice was taken of the unemployment insurance decision, bearing reference

01, together with the pages attached thereto (6 pages in all). Employer's Exhibits 1 and 2 were admitted into evidence. Employer's Exhibit 3 was admitted into evidence as a late exhibit when received.

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Ernesto Lucero Reyes was employed with Tyson Fresh Meats, Inc. on July 10, 2000. The claimant was performing the job duties of a band saw operator on a production line of Tyson Fresh Meats, Inc. in Council Bluffs, Iowa. The employer had adopted safety policies that were not provided to the claimant. The employer had also adopted a disciplinary policy that generally required written warnings, a suspension and ultimately a discharge for misconduct.

During the tenure of the claimant's employment, he had received written warnings on several occasions.

The claimant acknowledged receipt of the disciplinary action matter that occurred on or about June 15, 2003 and was suspended for a period of time. Disciplinary action took place because of throwing meat. Another disciplinary action warning was issued to the claimant on or about June 23, 2003 for throwing meat and not using a meat pusher. The last incident which triggered the discharge of the claimant occurred on January 21, 2004. The claimant and other employees were returning from a lunch break and rushing back to the location where they were assigned to perform their job duties. The claimant's testimony is believable and established that he accidentally ran into a co-employee. The co-employee allegedly pushed the claimant back. The incident was observed by John Meadows, Production Supervisor, who was working on a computer in the vicinity of the incident that took place. John Meadows immediately went to the location of the parties and then called Bill McKeeman, Production Supervisor. The claimant was suspended and sent home. When the claimant returned on January 22, 2004, he held a conversation with Bill McKeeman, Production Supervisor. Susan Pfeiffer, Human Resources Manager, was present as well as an interpreter. There was some discussion between the parties. The claimant apparently interrupted Bill McKeeman and was told not to say anything.

The incident did not occur on the production line while the parties were working but occurred when they were returning from a lunch break. All the parties appeared to be in a hurry to return from lunch break and report for duty where they were assigned. The last incident which occurred on January 21, 2004 was not found to be a deliberate act on the part of the claimant.

REASONING AND CONCLUSIONS OF LAW:

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).

The last incident which occurred was not the result of an intentional act on the part of the claimant, which would constitute misconduct as that term is defined above. The incident was an accident and occurred when the parties were returning from lunch. The claimant's testimony is believable and the conduct does not constitute misconduct as that term is defined above.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, the incident which lead to the discharge of the claimant was not a deliberate act but rather an isolated instance that occurred between the claimant and a coworker returning from lunch.

Such conduct is not found to be misconduct as that term is defined above.

The administrative law judge concludes that Ernesto Lucero Reyes was discharged from his employment with Tyson Fresh Meats, Inc. on January 22, 2004 for no disqualifiable reason within the intent and meaning of Iowa Code Section 96.5-2-a.

DECISION:

The unemployment insurance decision dated February 20, 2004, reference 01, is affirmed. Ernesto Lucero Reyes was discharged from his employment with Tyson Fresh Meats, Inc. on January 22, 2004 for no disqualifiable reason and unemployment insurance benefits are allowed, provided the claimant is otherwise eligible within the intent and meaning of the Iowa Employment Security Law.

tjc/kjf