

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

DEMETRIO IBARRA
3506 – 4TH AVE
COUNCIL BLUFFS IA 51501-3230

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

Appeal Number: 06A-UI-02617-DWT
OC: 02/05/06 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 23, 2006 decision (reference 01) that concluded Demetrio Ibarra (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 28, 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. Susan Pfeiffer, the human resources manager at the Council Bluffs facility, appeared on the employer's behalf. During the hearing, Employer's Exhibit One was offered and admitted as evidence. 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 October 15, 2001. The claimant worked full time loading and picking product. Harry Fichter was the claimant's supervisor.

On January 25, 2006, an employee told Fichter he had observed the claimant take three boxes of product to a production room around 5:30 a.m. The employee then observed the claimant put a label on each of the boxes. The employee reported the claimant made labels indicating the product was too old to be sold to a customer, when in fact the product was not too old.

The employer allows employees to purchase product that is good but too old to ship to customers. The employer checked employee sales and noticed that two employees bought the three boxes of product. One employee paid \$45.90 for two boxes of the product.

The employer talked to the claimant about this incident on February 2, 2006. The claimant explained that he re-boxed three boxes of product that were damaged. When he put the labels on the new boxes, he changed the dates on the boxes so employees could buy the product. While no one asked the claimant to do this, he had recently talked to an employee who asked the claimant to let him know when there was product available for employees to buy. (Employer's Exhibit One).

The claimant established a claim for unemployment insurance benefits during the week of February 5, 2006. The claimant filed claims for the weeks ending February 11 through March 4. The claimant received \$1,592.00 in benefits for 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 evidence presented during the hearing indicates the claimant knowingly changed the date on the labels of three boxes of product so employees could purchase the product even though the product should have been shipped to customers. Without any explanation as to why he did this, the facts establish the claimant intentionally disregarded the employer's interests and the standard of behavior the employer has a right to expect from an employee. The employer

discharged the claimant for work-connected misconduct. As of February 5, 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 February 11 through March 4, 2006. The claimant has been overpaid a total of \$1,592.00 in benefits he received for these weeks.

DECISION:

The representative's February 23, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 5, 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 benefits for the weeks ending February 11 through March 4, 2006. The claimant has been overpaid and must repay a total of \$1,592.00 in benefits he received for these weeks.

dlw/kkf