

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

**SANTOS MENJIVAR-FRANCO**  
**1015 FAIRFAX RD #7**  
**BELLEVUE NE 68005-3141**

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

**Appeal Number: 06A-UI-03541-CT**  
**OC: 01/01/06 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 for Misconduct

STATEMENT OF THE CASE:

Santos Menjivar-Franco filed an appeal from a representative's decision dated March 21, 2006, 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 April 19, 2006. Mr. Menjivar-Franco participated personally. The employer participated by Susan Pfeifer, Human Resources Manager. Claudia Salcedo participated as the interpreter.

The hearing record was left open to allow Mr. Menjivar-Franco an opportunity to present additional documentation. The documents were received on May 2, 2006. The administrative law judge contacted the employer on that date and was advised that Mr. Menjivar-Franco had provided the same documents to the employer. The employer indicated no objection to the

documents being admitted as Exhibit A. The hearing record was then closed as of May 2, 2006.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Menjivar-Franco began working for Tyson on October 22, 2001, as a full-time production employee. He is a native of El Salvador but was legally authorized to work in the United States. The employer has a process whereby individuals with work authorizations are provided notices that their authorizations are scheduled to expire. The first notice is sent 120 days before the authorization is due to expire and additional notices are generated every 30 days thereafter. The notices are enclosed with the paychecks.

Mr. Menjivar-Franco had a work authorization that was valid from September 10, 2003 through March 9, 2005. He completed an application for a new employment authorization on January 27, 2005. It was considered received by the United States Citizenship and Immigration Services (USCIS) on February 23, 2005. Mr. Menjivar-Franco was discharged on December 5, 2005, because he did not have a valid work authorization. At that point, he still had not been notified of action taken by USCIS on his request for renewal. Mr. Menjivar-Franco did not receive his new work authorization until April 19, 2006. He returned to work for Tyson on April 29. His lack of a valid work authorization was the sole reason for his discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Menjivar-Franco 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). Mr. Menjivar-Franco was discharged because he did not have a valid work authorization to work in the United States. He made a good-faith effort to maintain his work authorization by filing a timely application for renewal before his old authorization expired. He could not have known that it would take USCIS over one year to process his application. Mr. Menjivar-Franco's separation from Tyson was through no fault of his own.

The administrative law judge appreciates that the employer had no choice but to discharge Mr. Menjivar-Franco. The employer is prohibited by law from employing individuals who are not legally authorized to work in the United States. However, job insurance benefits are available to individuals unemployed through no fault of their own. For the reasons stated herein, the administrative law judge concludes that Mr. Menjivar-Franco was involuntarily separated from employment for no disqualifying reason. Accordingly, benefits are allowed. Since he returned to full-time employment on April 29, benefits are denied as of April 30, 2006.

#### DECISION:

The representative's decision dated March 21, 2006, reference 01, is hereby reversed. Mr. Menjivar-Franco was discharged, but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kkf