

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VERONICA L GEORGE
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 24A-UI-04955-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/28/24
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-finding Interview

STATEMENT OF THE CASE:

The employer, Tyson Fresh Meats Inc., filed an appeal from the unemployment insurance decision dated May 17, 2024, (reference 01), that held the claimant eligible for unemployment insurance benefits after a separation from employment. After due notice, a telephone hearing was held on June 10, 2024. The claimant did not participate. The employer, Tyson Fresh Meats, Inc. participated through Human Resources Partner Daniel Horton. The administrative law judge took official notice of the administrative record.

ISSUE:

Whether the separation was a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?
Whether the claimant has been overpaid any unemployment insurance benefits, and if so, whether the repayment of those benefits to the agency can be waived.
Whether any charges to the employer's account can be waived.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked as a full-time no-jobber for Tyson Fresh Meats, Inc. from February 13, 2023, until she was separated from employment on March 1, 2024. The claimant worked from approximately 3:30 p.m. to 11:30 p.m. Monday through Friday.

The employer has a written employee manual that contains an attendance policy. Pursuant to the policy, if an employee is sick and cannot work, the employee is required to call the employer's attendance hotline prior to the start of their shift to inform the employer of their absence. The policy notifies employees that three consecutive "no call, no show" absences will be considered job abandonment and will result in termination of employment. The claimant received a copy of, and was familiar with, the employer's attendance policy.

On Thursday, February 22, 2024, the claimant was arrested for violating her probation. The claimant was charged and then incarcerated in the Mills County Jail. The claimant was

scheduled to work the next day, Friday, February 23, 2024. The claimant was absent from work on February 23 and she did not call and inform the employer of her absence or that she had been incarcerated.

On Monday, February 26, 2024, one of the claimant's coworkers informed the employer that the claimant had been incarcerated. The claimant's coworker called the employer's attendance hotline on the claimant's behalf prior to the start of her shifts on February 26 and 27 and notified the employer of the claimant's absences.

The claimant was absent from work on February 28, 29, and March 1, 2024, and she did not call and notify the employer that she would be absent or have anyone else contact the employer on her behalf. On March 1, 2024, after the claimant's third consecutive "no call, no show" absence, the employer determined that the claimant had abandoned the job and processed her discharge. Since being released from jail, the claimant has not reported back to the employer to offer her services.

The claimant's administrative records indicate that the claimant filed her initial claim for benefits with an effective date of April 28, 2024. Since filing her initial claim, the claimant has filed no weekly claims and has received no unemployment insurance benefits. The employer did not participate in the fact-finding interview with Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation due to incarceration is disqualifying. Benefits are withheld.

Iowa Code section 96.5(2)(a) and (d) provide:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

...

(7) Incarceration for an act for which one could reasonably expect to be incarcerated that results in missing work.

Iowa Code § 96.5(11) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

11. Incarceration--disqualified.

a. If the department finds that the individual became separated from employment due to the individual's incarceration in a jail, municipal holding facility, or correctional institution or facility, unless the department finds all of the following:

(1) The individual notified the employer that the individual would be absent from work due to the individual's incarceration prior to any such absence.

(2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the individual was found not guilty of all criminal charges relating to the incarceration.

(3) The individual reported back to the employer within two work days of the individual's release from incarceration and offered services.

(4) The employer rejected the individual's offer of services.

b. A disqualification under this subsection shall continue 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.


Iowa Code section 96.6(2) states that the claimant has the initial burden to produce evidence showing that she is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11. If it is shown the claimant became separated from employment due to her incarceration, the claimant must produce evidence on whether the four conditions for avoiding incarceration disqualification are met.

In this case, the claimant cannot satisfy the first element because the employer was not informed of the claimant's incarceration prior to her absence on February 23, 2024. While the claimant's coworker did eventually inform the employer of the claimant's incarceration, he did not do so until Monday, February 26. Moreover, the claimant cannot satisfy the third element because she did not report back to the employer within two work days of her release from incarceration and offer her services. As the claimant has not satisfied all four elements, the claimant is disqualified from receiving benefits.

Since the claimant has not received any benefits, the issues of whether the claimant is overpaid benefits and whether the employer participated in the fact-finding interview are moot.

DECISION:

The May 17, 2024, (reference 01) unemployment insurance decision is reversed. The claimant was discharged for substantial job-related misconduct. Unemployment insurance benefits funded by the State of Iowa are denied until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount after the March 1, 2024 separation date, and provided she is otherwise eligible. No benefits have been paid to the claimant and the issues of overpayment and chargeability are moot.



Patrick B. Thomas
Administrative Law Judge

June 17, 2024
Decision Dated and Mailed

PBT/jkb/

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

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. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.