

**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**

**BRANDON A LOOBY  
2530 LAFAYETTE ST  
WATERLOO IA 50707**

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

**Appeal Number: 04A-UI-10662-CT  
OC: 08/29/04 R: 03  
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, 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:

Tyson Fresh Meats, Inc. (Tyson) filed an appeal from a representative's decision dated September 22, 2004, reference 01, which held that no disqualification would be imposed regarding Brandon Looby's separation from employment. After due notice was issued, a hearing was held by telephone on October 26, 2004. Mr. Looby participated personally. The employer participated by Dave Duncan, Employment Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Looby was employed by Tyson from June 19, 2001 until

August 26, 2004 as a full-time laborer. During a portion of the day on August 24, he was assigned to operate the forklift as a mule driver. His normal quitting time was 4:05 p.m. At approximately noon on August 24, Mr. Looby notified his supervisor that he had to leave in sufficient time to get to the babysitter's home by 5:00 p.m.

Mr. Looby spoke with another employee, Jose Lopez, at approximately 3:00 p.m. and asked him to be the mule driver after Mr. Looby left for the day. When Mr. Looby left at 4:05 p.m., he turned the keys of the forklift over to Mr. Lopez to complete the mule driver duties for the day. Because Mr. Looby did not remain as the mule driver until all product was put away, the employer concluded that he had walked off the job. Therefore, he was discharged on August 26, 2004. Mr. Looby had not been disciplined for any matters during the course of his employment with Tyson.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Looby 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. Looby was discharged for leaving before he had completed his assigned duties on August 24. He had notified his supervisor that he would be unable to remain later than usual. The supervisor did not deny this exchange; he simply did not recall it. Mr. Looby made arrangements for a coworker to assume his mule driver duties after he left. For the above reasons, the administrative law judge concludes that Mr. Looby's conduct constituted an isolated instance of a good-faith error in judgment rather than an intentional disregard for the employer's standards.

While the employer may have had good cause to discharge Mr. Looby, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed.

#### DECISION:

The representative's decision dated September 22, 2004, reference 01, is hereby affirmed. Mr. Looby was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs