

**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**

**DARRYL W MANLEY
1405 SENECA ST APT 9
STORM LAKE IA 50588**

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

**Appeal Number: 04A-UI-02378-HT
OC: 01/25/04 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 – Overpayment

STATEMENT OF THE CASE:

The employer, Tyson, filed an appeal from a decision dated February 25, 2004, reference 01. The decision allowed benefits to the claimant, Darryl Manley. After due notice was issued a hearing was held by telephone conference call on March 25, 2004. The claimant participated on his own behalf. The employer participated by Assistant Personnel Director Tim Baak and Plant Superintendent Joel Graybill.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Darryl Manley was employed by Tyson from July 22, 2003 until February 4, 2004. He was a full-time production worker.

On January 17, 2004, two supervisors discovered the claimant sleeping on the job. Company policy calls for discharge for this, but the claimant was given a verbal warning because the employer took into account he was taking prescription medications for a work-related injury. On January 24, 2004, he was again discovered sleeping on the job but was still not discharged, but was given a written warning on January 26, 2004, and a one-day suspension. Assistant Personnel Director Tim Baak explained that he was being given some "slack" due to the medications he was taking, but that sleeping on the job was not allowed.

Mr. Manley left before the end of his shift on January 26, 2004, without permission from a supervisor. Personnel Director Jim Petzoldt contacted him on January 28, 2004, to discover why he had not returned to work after his one-day suspension. The claimant maintained that Plant Superintendent Joel Graybill had come up to him after the meeting on January 26, 2004, and told him he was fired instead of merely suspended. Mr. Manley stated he had been asked to cross out the word "suspended" on the written warning and put in "terminated." Mr. Petzoldt asked him to come to the plant to meet with himself and Mr. Graybill, and to bring the paper. However, the claimant only showed up to clean out his locker and turn in his ID badge, and declined to meet with Mr. Petzoldt and Mr. Graybill.

Darryl Manley has received unemployment benefits since filing a claim with an effective date of January 25, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The record does not support a finding that the claimant was fired as he maintained. Not only does a plant superintendent lack the authority to fire anyone without corporate approval, Mr. Graybill's testimony was that he did not speak with Mr. Manley after the meeting of January 26, 2004. In addition, the claimant had three opportunities to provide a copy of the document he allegedly was asked to change from "suspension" to "termination," and has not done so. He did not provide it to the employer on January 28, 2004, he did not submit it to the fact-finding interview, nor to the administrative law judge. This calls into question whether the document exists at all. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The record establishes the claimant quit. He apparently quit because he had been reprimanded and this is not good cause attributable to the employer under the provisions of 871 IAC 25(28). He is disqualified.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of February 25, 2004, reference 01, is reversed. Darryl Manley is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$675.00.

bgh/b