

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

MARIO A RAMIREZ-GUERRERO
417 RUSSELL ST
STORM LAKE IA 50588

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

Appeal Number: 04A-UI-05683-AT
OC: 04/25/04 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 96.5-2a – Discharge
Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. filed a timely appeal from an unemployment insurance decision dated May 11, 2004, reference 01, which allowed benefits to Mario A. Ramirez-Guerrero. After due notice was issued, a telephone hearing was held on June 10, 2004 with Human Resources Manager Jim Petzoldt participating for the employer. Mr. Ramirez-Guerrero did not respond to the hearing notice by providing a telephone number at which he could be contacted.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Mario A. Ramirez-Guerrero was a production worker for Tyson Fresh Meats, Inc. from January 20, 2004 until he was discharged April 23, 2004. The final incident leading to his discharge was an absence without contact on April 16, 2004, a Friday. He was sent home pending investigation on the following Monday. He was scheduled to be off until April 23, 2004 and was discharged when he returned to work on that day. In addition to the incident on April 16, 2004, Mr. Ramirez-Guerrero was absent because of personal business on April 3, 2004. He had requested two hours off that day. That request had been granted, but Mr. Ramirez-Guerrero did not return for the balance of the day. He was absent without contact on March 2, 2004 and tardy because of oversleeping on February 27, 2004. He received warnings on March 2 and March 27.

He has received unemployment insurance benefits since filing a claim effective April 25, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with his work. It does.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The evidence in this record establishes four unexcused absences between February 27 and April 16, 2004. Four incidents and two warnings in less than two months is sufficient to establish excessive unexcused absenteeism. Benefits are withheld.

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.

Mr. Ramirez-Guerrero has received unemployment insurance benefits to which he is not entitled. It must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated May 11, 2004, reference 01 is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. He has been overpaid by \$768.00.

kjf/b