

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

ROBERT L MCCORMICK
36 NEW BLVD
COUNCIL BLUFFS IA 51501

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

Appeal Number: 04A-UI-01811-HT
OC: 01/11/04 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

STATEMENT OF THE CASE:

The employer, Tyson, filed an appeal from a decision dated February 11, 2004, reference 01. The decision allowed benefits to the claimant, Robert McCormick. After due notice was issued a hearing was held by telephone conference call on March 10, 2004. The claimant was mailed a notice of the hearing to his address of record on February 23, 2004. The notice was returned by the United States Postal Service on March 3, 2004, indicating it was not deliverable as addressed and was not able to be forwarded. No new address for the claimant has been provided to Iowa Workforce Development. The claimant did not participate. The employer

participated by Human Resources Manager Susan Pfeiffer and Maintenance Superintendent Chris Parker.

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: Robert McCormick was employed by Tyson from December 2, 2002 until January 12, 2004. He was a full-time general maintenance worker.

He had received written and verbal warnings regarding his attendance during the last year of his employment. He had reached 14 points on January 5, 2004, which is the level at which discharge occurs. Human Resources Manager Susan Pfeiffer and Maintenance Superintendent Chris Parker counseled the claimant about his attendance. Tyson agreed to give him a second chance because he was having personal problems, but he was advised any further attendance problems would lead to discharge.

On January 6, 2004, one day after the final warning, he was 2½ hours late to work because he had overslept. He was discharged by Mr. Parker and Ms. Pfeiffer.

Robert McCormick filed a claim for unemployment benefits with an effective date of January 11, 2004. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

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

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being 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. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant had been advised his job was in jeopardy as a result of his absenteeism. In spite of a "second chance" and final warning, the claimant was over two hours late to work the next day due to oversleeping. Matters of purely persona consideration are not considered excused absences. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The claimant is disqualified.

DECISION:

The representative's decision of February 11, 2004, reference 01, is reversed. Robert McCormick is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjf