

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

CARRIE K GUILLAUME  
405 S MAPLE  
P O BOX 215  
WINFIELD IA 52659

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

Appeal Number: 04A-UI-09999-CT  
OC: 08/15/04 R: 04  
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, 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  
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (Tyson) filed an appeal from a representative's decision dated September 8, 2004, reference 01, which held that no disqualification would be imposed regarding Carrie Guillaume's separation from employment. After due notice was issued, a hearing was held by telephone on October 8, 2004. Ms. Guillaume participated personally. The employer participated by Kris Travis, Employment Manager, and Bob Potter, Accounting Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Guillaume was employed by Tyson from May 15, 2003 until August 13, 2004 as a full-time accounting clerk. She was discharged for falsifying her time records. The employer conducted an investigation because it was felt that more hours were being utilized than necessary. The security guard was asked to monitor and report on the arrival and departure times.

The employer's investigation revealed that Ms. Guillaume falsified her time for the payroll period ending July 24. She reported that she had worked from 6:30 a.m. until 7:00 p.m. on July 19, 2004. The employer's review of the surveillance tape at the entrance of the building established that she reported to work at 7:03 a.m. and left at 5:28 p.m. She falsified her time for each day from July 26 through July 30. The discrepancies ranged from 15 minutes to one hour. During the week of August 2 through August 6, she falsified her time on three occasions. The discrepancies ranged from 25 minutes to one hour. When questioned by the employer, Ms. Guillaume maintained that the times she entered on her time card were accurate. Because her time card conflicted with the times noted by security and what the employer was able to observe on the video surveillance, the employer concluded that Ms. Guillaume was, in fact, falsifying her time card. Therefore, she was discharged on August 13, 2004.

Ms. Guillaume has received a total of \$2,174.00 in job insurance benefits since filing her claim effective August 15, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Guillaume 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). Ms. Guillaume was discharged for falsifying her time card. The most persuasive evidence consists of the employer's observations from the video surveillance tape which conflicted with Ms. Guillaume's handwritten entries on her time card. This factor, along with security's notations, convinces the administrative law judge that Ms. Guillaume did enter false starting and ending times on her time card. Such conduct constitutes theft as it results in an individual receiving pay for time she has not actually worked. Given the consistency of the falsifications, the administrative law judge concludes that they were not mere inadvertencies but a deliberate attempt to receive pay she was not otherwise entitled to receive. Such conduct is clearly contrary to the type of behavior an employer has the right to expect.

The administrative law judge concludes that the employer has satisfied its burden of proving substantial misconduct. Accordingly, benefits are denied. Ms. Guillaume has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated September 8, 2004, reference 01, is hereby reversed. Ms. Guillaume was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Guillaume has been overpaid \$2,174.00 in job insurance benefits.

cfc/b