

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

BEONG D AROB
APT 22
1507 N 48TH ST
OMAHA NE 68104-5154

TYSON FRESH MEATS INC
C/O TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-07772-DWT
OC: 07/02/06 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 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's July 25, 2006 decision (reference 01) that concluded Beong D. Arob (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 22, 2006. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Mike LeFerve, the plant human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on April 6, 2004. The claimant worked as a full-time employee. The claimant received information about the employer's attendance policy. The employer's attendance policy informs employees that within a rolling 12-month time frame, an employee may be discharged if they accumulate 14 or more attendance points. Before an employer discharges an employee for an attendance violation, the employer reviews the points accumulated to make sure none of the points should be covered under the Family Medical Leave Act.

On December 4, 2005, the claimant received a written warning that he had accumulated ten attendance points. Subsequent to the December 4, 2005 warning, the claimant received an attendance point for each of the following days: March 19 – called in personal illness; April 12 – called in personal absence for childcare issues; and May 4 – called in personal illness. On May 23, the claimant did not call or report to work and received three attendance points for this absence. On May 27, the claimant notified the employer he was ill and unable to work. The claimant received one attendance point for this absence. As of May 28, the claimant had accumulated 15.5 attendance points.

On May 30, the claimant reported to work. The employer tried to talk to the claimant about his absences in an attempt to find out if any of the absences were covered under FMLA. The claimant refused to talk about his absences. When the claimant declined to cooperate, the employer did not allow the claimant to work.

About a week, later, the claimant attempted to return to work. As of June 7, the employer no longer considered the claimant an employee, because he refused to talk to the employer about his attendance points on May 30.

The claimant established a claim for unemployment insurance benefits during the week of July 2, 2006. The claimant filed claims for the weeks ending July 8 through August 19, 2006. The claimant received his maximum weekly benefit amount of \$334.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. Although the employer asserted the claimant quit his employment, the employer initiated the employment separation. For unemployment insurance purposes, the employer discharged the claimant.

Misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known his job was in jeopardy in early December 2005, after he received a written warning that he had accumulated ten attendance points. The evidence indicates the employer discharged the claimant in part because he accumulated 15.5 points in a 12-month time frame. The claimant's May 23 absence resulted in three points that put him at 14.5 attendance points. Since the claimant did not participate in the hearing, it is not known why he did not call or report to work that day.

The claimant's failure to call or report to work on May 23, in addition to his refusal to talk on May 30 about his absences, constitutes an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for reasons constituting work-connected misconduct. As of July 2, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending July 8 through August 19, 2006. The claimant has been overpaid \$2,338.00 in benefits he received for these weeks.

DECISION:

The representative's July 25, 2006 decision (reference 01) is reversed. The claimant did not voluntarily quit his employment. Instead, the employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 2, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending July 8 through August 19, 2006. The claimant has been overpaid and must repay a total of \$2,338.00 in benefits he received for these weeks.

dlw/kjw