

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

ANGEL VILLAGOMEZ
1317 DREXEL ST
OMAHA NE 68107

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

Appeal Number: 05A-UI-07135-CT
OC: 06/05/05 R: 12
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 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 June 29, 2005, reference 01, which held that no disqualification would be imposed regarding Angel Villagomez' separation from employment. After due notice was issued, a hearing was held by telephone on July 29, 2005. The employer participated by Rita Huske, Safety Director, and Gary Sherbon, Supervisor. Mr. Villagomez did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Villagomez was employed by Tyson from July 5, 2000 until November 25, 2004 as a full-time janitor. On November 23, he was observed urinating into the trash compactor located behind the building in which he worked. The nearest restroom to the area he was in was approximately one minute's walk away. Mr. Villagomez had received a warning and one-day suspension in March of 2003 for urinating outside by the loading dock.

Mr. Villagomez has been paid a total of \$644.00 in job insurance benefits since filing his claim effective June 5, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Villagomez 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). Mr. Villagomez was discharged for urinating outside rather than using a restroom. He had previously been warned and suspended from work for the same conduct. Therefore, he knew that his actions were contrary to the employer's standards.

Tyson is a food processing facility. There is the possibility that visitors to the plant might see someone such as Mr. Villagomez urinating outside. Such observations might raise questions regarding the level of sanitation within the facility. Because Mr. Villagomez had been warned about urinating outside, the administrative law judge concludes that his conduct of November 23 constituted a substantial disregard of the standards the employer had the right to expect. Therefore, benefits are denied.

Mr. Villagomez has received benefits since filing his 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 June 29, 2005, reference 01, is hereby reversed. Mr. Villagomez was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Villagomez has been overpaid \$644.00 in job insurance benefits.

cfc/kjf