

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

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DAVENPORT IA 52803-4440

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

Appeal Number: 06A-UI-04510-DWT
OC: 03/26/06 R: 04
Claimant: Respondent (1)

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:

Tyson Fresh Meats, Inc. (employer) appealed a representative's April 17, 2006 decision (reference 01) that concluded Angela M. Bonnett (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 May 15, 2006. The claimant participated in the hearing. Tom Barragan, the employment manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 31, 2005. The employer informed the claimant she had to complete a probationary period satisfactorily to continue her job. The claimant worked in the maintenance department. In June, the claimant's foot was broken as the result of a work-related injury. After the claimant was injured, she returned to light-duty work but had a lot of trouble walking.

The employer allows probationary employees three attendance occurrences. On July 2, the claimant had an excused absence for a non-work related illness. Even though this was an excused absence, the claimant still received an attendance occurrence. On July 15, the claimant called the employer 15 minutes after her shift started at 6:00 a.m. to report she would be late for work. The claimant came to work at 6:35 a.m. On August 28 and September 1, the claimant was between four and five minutes late for work. As of September 1, 2005, the claimant accumulated four attendance occurrences. The claimant believed her job was in jeopardy after she injured her foot because she was constantly late due to problems with walking. Her supervisors told the claimant she should not worry because the employer would not consider her tardy when she was on light duty.

On August 25, another employee spilled screws and bolts on the floor. The claimant's job was to clean the floor. When the claimant asked the employee what she should do with the bolts and nuts on the floor, the employee told the claimant to throw them away. The claimant did this and her supervisor gave her a written warning for throwing away company property.

On August 28, 2006, the claimant was supposed to have someone help her clean the men's maintenance locker room because it was extremely dirty. After the safety meeting in the morning, the claimant did not have time to clean the locker room alone because men needed to use it before going to work.

On September 4, the claimant's doctor released her to return to work full-time work without restrictions. On September 6, the employer discharged the claimant for failing to satisfactorily complete her probationary period. The employer did not consider the claimant a dependable or reliable employee when she had accumulated four attendance occurrences in her probationary period. Also, the claimant did not complete her probationary period satisfactory when she threw away the employer's property and did not get the maintenance locker room clean in a timely manner.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, 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 employer had compelling business reasons for discharging the claimant. These reasons do not establish work-connected misconduct. Even though the employer recorded four attendance occurrences for the claimant, the last two occurred as the result of a work-related injury. The claimant did not intentionally or substantially disregard the employer's interests. The other two incidents were beyond the claimant's control. On August 25 when the claimant threw away some bolts and screws, she may have used poor judgment when she followed an employee's advice, but the claimant did not intentionally disregard the employer's interests in this instance either. Failing to satisfactorily complete a probationary period does not disqualify a claimant from receiving benefits. Since the claimant did not commit work-connected misconduct, she is qualified to receive benefits as of March 26, 2006.

DECISION:

The representative's April 17, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of March 26, 2006, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kkf