

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

FRANCISCO J CUEVAS
609 W 6TH ST
STORM LAKE IA 50588

TYSON FRESH MEATS INC
c/o TALX UC EXPRESS
PO BOX 384
ST LOUIS MO 63166 0283

Appeal Number: 05A-UI-03686-DWT
OC: 03/06/05 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:

Tyson Fresh Meats, Inc. (employer) appealed a representative's March 31, 2005 decision (reference 01) that concluded Francisco J. Cuevas (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 April 29, 2005. The claimant responded to the hearing notice by providing a phone number at which to contact. The claimant was not available for the hearing.

When the claimant was not available for the hearing, the interpreter was excused. Mark Campbell, the production training 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.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on April 18, 2000. The claimant worked full time on the A-shift as a production worker. The employer's safety policy requires employees to wear mesh sleeves when they open picnic hams. The employer's policy informs employees they will be discharged if they accumulate five safety violations in a year.

On February 10, 2005, the employer gave the claimant a written warning for failing to wear mesh sleeves while opening picnic hams. This was the claimant's first safety violation. On March 2, the claimant failed to wear mesh sleeves while opening picnic hams. On March 3, the claimant jumped off a catwalk in violation of the employer's safety rules. On March 3, the claimant again failed to wear mesh sleeves while opening picnic hams. The employer talked to the claimant on March 2 and 3 about the need to wear mesh sleeves while opening picnic hams.

On March 8, the employer again observed the claimant opening picnic hams without wearing any mesh sleeves. When the plant superintendent talked to the claimant about violating the employer's policy, the claimant indicated the mesh sleeve bothered his shoulder so he wears two Kevlar sleeves instead. The employer suspended the claimant on March 8 for repeatedly violating the employer's safety rule about wearing mesh sleeves.

The claimant never provided the employer with a doctor's statement indicating that for medical reasons the claimant could not wear mesh sleeves. When an employee cannot wear a mesh sleeve, the employer assigns the employee to another job that does not require employees to wear mesh sleeves. On March 9, 2005, the employer discharged the claimant for repeatedly violating the employer's safety rule.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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 facts establish the employer reminded the claimant more than once that the employer required employees to wear mesh sleeves when opening picnic hams. Since the claimant did not provide any medical statement indicating the employer needed to accommodate him because he could not wear the mesh sleeve without hurting his shoulder, the employer had no opportunity to assign the claimant to another job. Instead, the claimant took matters into his own hands and decided he could modify the employer's safety rules by wearing two Kevlar

sleeves instead of the mesh sleeve. The evidence reveals the claimant intentionally and substantially disregarded the employer's interests by repeatedly violating the employer's safety rules. The employer discharged the claimant for work-connected misconduct. As of March 6, 2005, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 31, 2005 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 6, 2005. 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.

dlw/s