

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

JUAN A GUTIERREZ
PO BOX 44
COLUMBUS JCT IA 52738-0044

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

Appeal Number: 04A-UI-04776-RT
OC: 08-31-03 R: 04
Claimant: Appellant (2-R)

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 96.6-2 – Initial Determination (Previous Adjudication)

STATEMENT OF THE CASE:

The claimant, Juan A. Gutierrez, filed a timely appeal from an unemployment insurance decision dated March 8, 2004, reference 02, denying unemployment insurance benefits to him. After due notice was issued for a telephone hearing on May 26, 2004, at 3:00 p.m., neither the claimant nor the employer, Tyson Fresh Meats, Inc., responded to the hearing notices by calling in telephone numbers, either before the hearing or 15 minutes after the hearing, where witnesses could be reached for the hearing, as instructed in the notices. Consequently, no hearing was held. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having examined the record, the administrative law judge finds: An authorized representative of Iowa Workforce Development issued a decision in this matter on March 8, 2004, reference 02, determining that the claimant was not eligible to receive unemployment insurance benefits because records indicate that the claimant left his employment voluntarily on February 6, 2004 and has failed to produce evidence showing that he had good cause for voluntarily leaving his employment. Pursuant to his claim for unemployment insurance benefits filed effective August 31, 2003, and reopened effective February 8, 2004 and March 28, 2004, the claimant has received unemployment insurance benefits in the amount of \$6,100.00 from benefit week ending September 6, 2003 through and including benefit week ending February 7, 2004. Thereafter, the claimant is shown as disqualified because of a voluntary quit. During that period of time the claimant reported wages of \$1,628.00 and vacation pay in the amount of \$265.00. Even assuming that the vacation pay was wages, the total wages for this period earned by the claimant as far as his reports are concerned, would be \$1,893.00. Workforce Development records indicate that the employer, Cambridge Tempositions, Inc., the only employer since the employer herein, paid the claimant \$1,823.85 in the fourth quarter of 2003 and the first quarter of 2004. Even adding to the amounts reported by the employer the earnings reported by the claimant after the first quarter of 2004, the claimant would have earned only \$2,719.85. The last wages earned by the claimant herein from the employer herein, according to reports filed by the employer, were in the second quarter of 2003. The date of separation, February 6, 2004, is the date reported to Iowa Workforce Development by the claimant.

By decision dated October 7, 2003, reference 01, an Iowa Workforce Development representative determined that the claimant was eligible to receive unemployment insurance benefits and the employer's account might be charged for benefits paid because records indicate that on August 26, 2003 the claimant offered to return to work following his illness or injury and no work was available. This decision was not appealed by the employer. The claimant does not appear to have worked for the employer after this date.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the issue in this appeal has been previously adjudicated. The administrative law judge concludes that the issue presented by this appeal had been previously adjudicated.

Iowa Code Section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce

evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the issue presented by this appeal is whether the claimant's separation from the employer herein was disqualifying. This issue was previously adjudicated by a decision by an Iowa Workforce Development representative dated October 7, 2003, reference 01, allowing unemployment insurance benefits to the claimant and providing that the employer's account might be charged for benefits paid because records indicate on August 26, 2003, the claimant offered to return to work following his illness or injury and no work was available. This decision was not appealed by the employer. Workforce Development records do not indicate that the claimant has received any other earnings thereafter from the employer. The proper remedy for the employer is to appeal this decision if the employer can overcome the timeliness issue. Accordingly, the administrative law judge concludes that the issue in this appeal has been previously adjudicated and cannot now be adjudicated, namely the claimant's separation from employment on or about August 26, 2003. As a consequence, the decision dated October 7, 2003, reference 01, remains in full force and effect and the claimant is entitled to receive unemployment insurance benefits provided he is otherwise eligible.

Neither party participated in the hearing. In the employer's protest, the employer stated nothing about the claimant's separation. In the letter dated February 20, 2004 accompanying the employer's protest, the employer's representative states that the claimant's last day of work was July 8, 2003 and that he is considered to have abandoned his job after failing to return to work. Neither party participated in fact-finding. In the claimant's appeal the claimant stated that he did not work for Tyson after he left on August 29, 2003, but worked for someone else, "Kyser." The claimant does seem to indicate in his appeal that he did quit this employment and reported to Iowa Workforce Development a separation date of February 6, 2004. The administrative law judge notes that the separation dated July 8, 2003, according to the representative's letter dated February 20, 2004, has been previously adjudicated as noted above.

In order to determine whether the claimant is otherwise entitled or eligible to receive unemployment insurance benefits, this matter must be remanded to claims for an investigation and determination as to whom the claimant was employed by in the spring of 2004 when he reopened his claim for benefits both on February 8, 2004 and March 28, 2004. Further, an investigation and determination must be made as to whether the separation, if any, from that employer was disqualifying. Finally, an investigation and determination must be made as to whether the claimant is overpaid any unemployment insurance benefits which he has received since initially filing for unemployment insurance benefits effective August 31, 2003.

DECISION:

The representative's decision of March 8, 2004, reference 02, is reversed. The issue presented by this appeal has been previously adjudicated in a decision by an authorized representative of Iowa Workforce Development dated October 7, 2003, reference 01, and it remains in full force and effect, allowing the claimant unemployment insurance benefits, until and unless such decision is appealed and reversed. In order to determine whether the claimant is otherwise entitled to receive unemployment insurance benefits, this matter must be remanded to Claims for an investigation and determination as to the employment the claimant had in the spring of 2004 when he reopened his claim for unemployment insurance benefits effective February 8, 2004 and March 28, 2004; and an investigation and determination as to whether the separation from this employment, if any, was disqualifying, and an investigation and determination as to whether the claimant is overpaid any unemployment insurance benefits he has already received.

REMAND:

This matter is remanded to Claims for an investigation and determination as to the employment the claimant had in the spring of 2004 during which or immediately after which he reopened his claimant for unemployment insurance benefits effective February 8, 2004 and March 28, 2004. This matter is also remanded to Claims for an investigation and determination as to whether the claimant's separation from that employment, if any, was disqualifying. Finally, an investigation and determination must be made as to whether the claimant is overpaid any unemployment insurance benefits he has previously received.

tjc/tjc