

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

OCHAN ADADA  
APT B2  
401 CAYUGA ST  
STORM LAKE IA 50588

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

Appeal Number: 05O-UI-04277-HT  
OC: 01/09/05 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Tyson Fresh Meats, Inc. (Tyson), filed an appeal from a decision dated February 3, 2005, reference 01. The decision allowed benefits to the claimant, Ochan Adada. After due notice was issued a hearing was held by telephone conference call on May 12, 2005. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Human Resources Manager Sarah Mendoza.

## FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Ochan Adada was employed by Tyson from May 11 until December 29, 2004. He was a full-time production worker.

Mr. Adada received a written warning and counseling from the employer on December 21, 2004, for having ten absences on his record. On December 27, 2004, he was scheduled to begin work at 4:30 p.m. but called in prior to his shift to say he would not be in because he was sick. He returned to work the next day and confessed to his supervisor that he had not been ill but had been out of town and had had car problems. The supervisor consulted with Superintendent Orv Molan and that matter was taken to Human Resources Manager Sarah Mendoza.

The claimant admitted to falsifying the reason for his absence, indicating only that he thought it would be "safer" to say he was sick rather than that he had car problems. He had not arrived back in town the day before until 6:30 p.m., after the start of his shift. Mr. Molan asked the claimant if he realized he had put his job in jeopardy by falsifying the reason for his absence and the claimant admitted he did. He was suspended pending a review of the circumstances and told to come in the next day. On December 29, 2004, the claimant was discharged for violation of the company rule which provides for discharge for verbal or written misrepresentation.

Ochan Adada has received unemployment benefits since filing a claim with an effective date of January 9, 2005.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as

is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was discharged for lying to the employer about the reason for his absence. This is a material breach of the duty of honesty an employee owes to an employer. An employer has the right to expect employees to give accurate information in all aspect of their job, including the reason for any absence. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's decision of February 3, 2005, reference 01, is reversed. Ochan Adada is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$1,050.00.

bgh/sc