

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 J GALVEZ-BARRAGAN  
70 AVE A  
DENISON IA 51439

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

Appeal Number: 05A-UI-02414-SWT  
OC: 01/30/05 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 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 2, 2005, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was originally held on March 29, 2005, but the hearing was reopened because the claimant did not receive the hearing notice until March 28, 2005, and was unsuccessful in calling in his telephone number after repeated attempts on March 29. A telephone hearing was held on April 12, 2005. The parties were properly notified about the hearing. The claimant failed to provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Jeff Huston participated in the hearing on behalf of the employer.

## FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from September 9, 2004, to December 30, 2004. He was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination after 14 attendance points. Points are assessed for unscheduled absences, and three points are assessed for an absence without notice to the employer.

On December 31, 2004, the claimant called in and informed his supervisor that his child was sick and he would not be at work. The claimant called and notified the employer that he would not be at work because his son was sick. He was told that it would be fine as long as he brought in a doctor's note.

That same evening after he returned from the hospital, the claimant got a call from his mother stating that his father had been injured in a car accident in Mexico and he needed to get there as soon as possible. The claimant traveled to Mexico by airplane and did not return to work until January 18, 2005, when he stopped by to pick up his last paycheck. A short time before the claimant arrived at the plant, the employer received a fax from a doctor explaining that the claimant's father was injured in a car accident in Mexico.

The claimant did not notify the employer about the need to be off work to go to Mexico due to his father's accident. The employer was only aware of the absence due to his son's illness. The claimant was considered absent without notice on January 3, 4, 5, 6, and 7, 2005, and was given 15 points for these absences. He already had attendance points for missing work on December 20, 2004. On January 7, 2005, the employer prepared a separation notification stating that the claimant was terminated for violating the attendance policy. The claimant was informed that his employment was terminated on January 18, 2005.

The claimant filed for and received a total of \$3,542.00 in unemployment insurance benefits for the weeks between January 30 and April 16, 2005.

## REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the employer's evidence that the claimant did not inform the employer about his father's accident and the need to travel to Mexico. The claimant's violation of a known work rule that required him to notify the employer each day he was absent was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. If this case was viewed as leaving due to an injury to an immediate family member under Iowa Code section 96.5-1-c, the claimant has not proven that he was needed to provide care to his father. Even if this case was viewed as leaving for compelling personal reasons under Iowa Code section 96.5-1-f, the claimant was gone over the limit of ten days provided by the law without notice to the employer. The claimant is disqualified from receiving unemployment insurance benefits.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$3,542.00 in unemployment insurance benefits for the weeks between January 30 and April 16, 2005.

DECISION:

The unemployment insurance decision dated March 2, 2005, reference 03, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$3,542.00 in unemployment insurance benefits, which must be repaid.

saw/pjs