

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

COLE J WRAGE
APT 2
113 EASTGATE DR
REINBECK IA 50669

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

Appeal Number: 05A-UI-08273-DWT
OC: 07/10/05 R: 03
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 August 3, 2005 decision (reference 01) that concluded Cole J. Wrage (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 August 30, 2005. The claimant participated in the hearing. Dave Duncan, the complex human resource 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 claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 5, 2004. The claimant worked as a full-time employee.

The claimant started experiencing medical problems with his foot and started calling in sick on June 5, 2005. The claimant saw his doctor on June 9, 2005. The claimant's doctor restricted the claimant from doing any work until June 30, 2005. Although the claimant kept calling to let the employer know he was unable to work as scheduled, the claimant did not provide the employer with a doctor's excuse. The claimant thought it was all right to provide the doctor's statement when he returned to work.

On June 17, 2005, the employer sent the claimant a certified letter informing the claimant he had to provide the employer with documentation verifying he could not work for medical reasons by June 24. The letter also warned the claimant that if he did not provide the requested documentation by June 24, the employer would remove him as an active employee.

The claimant did not receive the certified letter until June 29, 2005. The claimant immediately called the employer to let the employer know he had just received the employer's letter and had a doctor's statement. When the claimant called, he asked to talk to the assistant human resource manager, R.S. The June 17 letter told the claimant to contact R.S. Even though R.S. was not available, the claimant left a message for R.S. to call him back. The claimant called a second time when R.S. did not return his call. Again, R.S. was not available and the claimant left a second message for R.S. to call him. When R.S. did not return the claimant's calls, the claimant assumed he had been discharged.

The employer's records do not indicate the claimant called in to report he was unable to work after June 29, 2005. The employer removed the claimant as an active employee on July 7 for failing to have any contact with the employer after June 29, 2005.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-1, 2-a. The facts indicate the employer initiated the separation by sending the June 17, 2005 certified letter. When the claimant received the letter on June 29, 2005, he acted reasonably by calling the employer immediately. According to the letter, the employer had already been taken the claimant off the active employee list because he had not provided the requested documentation by June 24. The assistant human resource manager's failure to return the claimant's two calls supports the fact the employer had discharged the claimant by the time he first contacted the employer on June 29.

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 evidence indicates the employer discharged the claimant because he did not provide a doctor's statement to the employer by June 24, 2005. Granted the claimant used poor judgment when he did provide a copy of the doctor's statement to the employer right away, this failure this does not rise to the level of work-connected misconduct. After the claimant received the certified letter on June 29, he did not report to work because the June 17 letter indicated he had already been discharged and the assistant human resource manager failed to return the claimant's messages. Under these facts the claimant did not commit work-connected misconduct. As of July 10, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 3, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of July 10, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjw