

**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**

**JOSUE MONTOYA  
5809 S 18<sup>TH</sup> ST  
OMAHA NE 68107**

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

**Appeal Number: 05A-UI-11793-CT  
OC: 10/30/05 R: 12  
Claimant: Appellant (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, 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 for Misconduct

STATEMENT OF THE CASE:

Josue Montoya filed an appeal from a representative's decision dated November 14, 2005, reference 01, which denied benefits based on his separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on December 8, 2005. Mr. Montoya participated personally. The employer participated by Mike LeFevre, Human Resources Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Montoya was employed by Tyson from

December 23, 2002 until October 14, 2005. He worked full time as a truck loader. He was discharged because of his attendance.

Mr. Montoya was absent on July 2, 2005 because he did not have transportation. He was absent due to personal business on August 25, 2005. He received warnings about his attendance on July 7, 2004, and on June 29, July 17 and August 25, 2005. The final absence that caused the discharge occurred on October 11, 2005, when Mr. Montoya was again absent because he did not have a ride to work. He was notified of his discharge on October 14, 2005. Attendance was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Montoya was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Absences that are for reasonable cause and are properly reported are considered excused absences.

Mr. Montoya's absences of July 2, September 23, and October 11, 2005 are all unexcused. The absences were caused by matters of personal responsibility, transportation and personal business. Such absences are not considered excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The three unexcused absences occurred over a period of approximately three months. The administrative law judge considers an average of one unexcused absence per month to be excessive. Mr. Montoya had been warned that his attendance was jeopardizing his continued employment with Tyson. Excessive unexcused absenteeism constitutes a substantial disregard for the standards an employer has the right to expect. For the reasons stated herein, it is concluded that disqualifying misconduct has been established and benefits are denied.

#### DECISION:

The representative's decision dated November 14, 2005, reference 01, is hereby affirmed. Mr. Montoya was discharged for misconduct in connection with his employment with Tyson. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/kjw