

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

JARED I ARAUJO
324 ONEIDA ST
STORM LAKE IA 50588

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

Appeal Number: 05A-UI-05393-DWT
OC: 04/24/05 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, 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's May 13, 2005 decision (reference 02) that concluded Jared I. Araujo (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 June 14, 2005. The claimant participated in the hearing. Rosie Paramo-Ricoy interpreted the hearing. Farah Mendoza, the 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 do not qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on June 22, 2004. The claimant worked as a full-time hourly production worker. The claimant received a copy of the employer's attendance policy that informed employees they would receive attendance points for unexcused absences. The employer's attendance policy further provides that if an employee accumulates 14 attendance points in a year, the employer will discharge the employee.

During his employment, the claimant received written warnings for attendance issues on October 26, 2004, and February 18, 2005. The claimant received the October 26 written warning because he failed to notify the employer when he was unable to work as scheduled.

The claimant's last actual day of work was April 8, 2005. The claimant was on a leave of absence April 11 through 13, 2005, when the claimant's wife was hospitalized. The claimant called the employer on April 14, 15, 18 and 19 to inform the employer he was unable to work as scheduled because either he was ill or his wife was ill. The claimant did not contact the employer or report to work on April 20, 21 or 22. The employer considered the claimant to have abandoned his job when he did not call or report to work for three consecutive days.

On April 25, 2005, the claimant went to work, but was not allowed to work. A superintendent informed the claimant that he no longer worked for the employer.

The claimant established a claim for unemployment insurance benefits during the week of April 24, 2005. The claimant filed claims for the weeks ending April 30 through June 11, 2005. He received his maximum weekly benefit amount of \$286.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The facts establish the claimant was off work for a while because of his wife was ill and in the hospital. Even though the claimant had accumulated 13 or 14 points as of April 19, the employer had not made any decision about his continued employment. Instead of giving the employer the opportunity to make a decision about his continued employment, the claimant failed to call or report to work for three consecutive days, April 20 through 22. By the time the claimant reported to work on Monday, April 25, the employer already considered the claimant's employment relationship terminated because the claimant had abandoned his job as of April 22, 2005.

Since the claimant returned to work on April 25, 2005, the claimant did not voluntarily quit his employment. The employer discharged him for excessive absenteeism. When the claimant

failed to call or report to work for three consecutive days, April 20, 21 and 22, he intentionally and substantially disregarded the employer's interests. The employer discharged the claimant for reasons constituting work-connected misconduct. As of April 24, 2005, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending April 30 through June 11, 2005. The claimant has been overpaid \$2,002.00 in benefits he received for these weeks.

DECISION:

The representative's May 13, 2005 decision (reference 02) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 24, 2005. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits for the weeks ending April 30 through June 11, 2005. The claimant has been overpaid and must repay \$2,002.00 in benefits he received for these weeks.

dlw/pjs