

**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**

**PAUL S IMES III  
3709 KNOLL RIDGE DR  
CEDAR FALLS IA 50613-5407**

**TYSON FRESH MEATS INC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-06046-DWT  
OC: 04/30/06 R: 03  
Claimant: Respondent (4)**

**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 96.5-1-d – Ability to Work after Being Off Work Due to an Injury  
Section 96.5-2-1 – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Tyson Fresh Meats, Inc. (employer) appealed a representative's June 2, 2006 decision (reference 01) that concluded Paul S. Imes, III (claimant) was eligible to receive unemployment insurance benefits because he offered to return to work and the employer did not have any work available for him to do. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 29, 2006. The employer responded to the hearing notice. When the employer's witnesses were called for the hearing, the employer then indicated no one on the employer's behalf would be participating at the hearing. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant eligible to receive benefits as of April 30, 2006?

As of June 5, 2006, was the claimant discharged from his employment for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on May 17, 2005. The claimant worked full time for the employer. Prior to going on a leave of absence for an injury on March 13, 2006, the claimant had a scheduled vacation the week of April 23.

The claimant reported his mid-March injury and the employer's workers' compensation carrier investigated the claim. On April 15, 2006, the claimant's physician released the claimant to return to light-duty work. The employer found light-duty work for the claimant to do the week of April 17.

While the claimant was on his scheduled vacation, the employer's workers' compensation carrier concluded the claimant's injury was not covered under workers' compensation. When the claimant returned from his scheduled vacation the week of April 30, 2006, the employer declined to accommodate the claimant's light-duty work restrictions and did not provide him with any light-duty work. As of April 30, the claimant was still restricted to performing light-duty work and could not perform his regular duties. The claimant went back on a leave of absence on May 2.

The claimant's doctor released the claimant to work without any restrictions as of June 5. The claimant intended to return to work on June 5, 2006. The claimant had transportation problems the week of June 3. The claimant notified the employer on June 5 that he was unable to work as scheduled because of car problems. The employer then informed the claimant he was discharged because he had violated the employer's attendance policy by accruing more than 14 attendance points in a year. As of June 4, the claimant understood he had 12.5 points and received 3 points for his June 5 absence.

The claimant established a claim for unemployment insurance benefits during the week of April 30, 2006. The claimant filed claims for the weeks ending May 6 through June 3, 2006. The claimant received his maximum weekly benefits amount of \$272.00 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 or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. When a claimant leaves employment because of an injury and the employer consents to the absence, a claimant is not disqualified from receiving benefits if the employer does not have work available when the claimant offers to return to his regular work. Iowa Code § 96.5-1-d. The facts establish the claimant went on a medical leave of absence in mid-March for medical reasons. As of April 30, the employer's

worker's compensation carrier concluded the claimant did not incur a work-related injury that was compensable under workers' compensation benefits. As a result of this conclusion, the employer did not make accommodations for the claimant's work restrictions. The claimant acknowledged that as of April 30, he could only perform light-duty work and was not capable of performing his regular job. Under Iowa Code § 96.5-1-d, the claimant had to offer to return to his regular job. The claimant was not medically able to return to his regular job until June 5, 2006. From April 30 through June 5, 2006, the claimant was not able to work and was on a medical leave of absence. As a result, the claimant was not eligible to receive benefits from April 30 through June 3, 2006. Iowa Code § 96.4-3 and 871 IAC 24.22(2)(j).

As of June 4, the claimant was able to return to work his regular job without any work restrictions. The employer discharged him for violating the employer's attendance policy on June 5. 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 employer may have had compelling business reasons for discharging the claimant. The evidence does not establish that he intentionally failed to work as scheduled. The employer did not establish that the claimant committed work-connected misconduct. As of June 4, 2006, the claimant is 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 benefits for the weeks ending May 6 through June 3, 2006. The claimant has been overpaid a total of \$1,360.00 in benefits he received for these weeks.

#### DECISION:

The representative's June 2, 2006 decision (reference 01) is modified in the employer's favor. The claimant is not eligible to receive unemployment insurance benefits April 30 through June 3, 2006, because he was medically unable to perform his regular job duties and was on a medical leave of absence. As of June 4, 2006, the claimant is qualified to receive benefits because the employer discharged him for reasons that do not constitute work-connected misconduct. The employer's account may be charged for benefits as of June 4, 2006. The claimant is not legally entitled to receive benefits for the weeks ending April 30 through June 3,

2006. The claimant has been overpaid and must repay a total of \$1,360.00 in benefits he received for these weeks.

dlw/kkf