

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

JESSE P YOUNG  
24 ½ N FREDERICK  
OELWEIN IA 50662

TYSON RETAIL DELI MEATS INC  
c/o TALX UC SERVICES  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-04254-RT  
OC: 03-14-04 R: 04  
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:

The claimant, Jesse P. Young, filed a timely appeal from an unemployment insurance decision dated April 6, 2004, reference 03, amending reference 02, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on May 6, 2004, with the claimant participating. Brooke Salger, Human Resources Manager in Independence, Iowa, participated in the hearing for the employer, Tyson Retail Deli Meats, Inc. Employer's Exhibits One and Two were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One and Two, the administrative law judge finds: The claimant was employed by the employer as a full-time machine operator from June 7, 1999 until he was discharged on March 16, 2004. The claimant was discharged for violation of employer's safety rules and regulations when, on March 10, 2004, he was working on a machine changing knife blades and did not "lock out, tag out" the machine. The employer has safety rules providing that when working on a machine that can be dangerous, the machine must be "locked out, tagged out," meaning that it is to be locked so that it cannot operate while being worked on. The claimant was aware of the employer's policy but did not lock out and tag out the machine because the air was shut off. However, the claimant knew it was supposed to be locked out and tagged out. The claimant was suspended on March 10, 2004 and after review by corporate headquarters, was discharged on March 16, 2004. The employer's policy about locking out and tagging out machines is posted and the claimant was aware of that policy. Previously, two workers had lost their hands and arms because they failed to lock out and tag out a machine and the employer was enforcing the policy. On January 15, 2004, the claimant was suspended for the same violation of the employer's safety rules when he did not lock out and tag out a machine. On July 1, 2003, the claimant was also suspended for a safety violation for the same reason, failing to lock out and tag out a machine. On October 22, 2002, the claimant was given a written warning for a safety violation for the same thing, failing to lock out and tag out a machine. These disciplines are shown at Employer's Exhibit Two.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from the employment was a disqualifying event. It was.

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).

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witness, Brooke Salger, Human Resources Manager, credibly testified that the claimant was discharged when he failed and refused to lock out, tag out a machine on March 10, 2004. The claimant testified that the air was shut off to the machine but nevertheless knew that it was supposed to be locked out and tagged out and did not know why he did not do so. The claimant also conceded that he knew of the employer's policy that required when working on a machine that can be dangerous it must be locked out and tagged out. The claimant conceded that the employer enforced this policy because two people had lost their hands and arms. Ms. Salger also credibly testified that the claimant was twice suspended for the exact same violation on July 1, 2003 and January 15, 2004 as shown in Employer's Exhibit Two. The claimant also received a written warning for the exact same violation on October 22, 2002. On each of these occasions, the claimant failed to lock out and tag out a machine that he should have locked out and tagged out and knew he should have locked out and tagged out. The claimant's testimony to the contrary is not credible. The claimant first testified that the employer's policy was not posted but conceded that it was posted somewhere in the building. The claimant then testified that he was not trained on the policy but finally admitted that he was aware that machines must be locked out and tagged out. The claimant even conceded that sometime prior to his discharge two people had lost their hands and arms and knew the importance of locking out and tagging out machines. Concerning the suspension on January 15, 2004, the claimant testified first that the machine was not locked out by him and then later said that it had been locked but his testimony was equivocal. The claimant testified that when he was suspended on July 1, 2003 that he did not know he needed to lock out, tag out machines but finally conceded that he had received a warning eight months earlier on October 22, 2002 for the same thing. The claimant's testimony is too inconsistent to be credible. The administrative law judge concludes that the claimant was fully aware of the lock out, tag out policy and violated it on four different occasions, the most recent of which, on March 10, 2004, resulted in his discharge.

Because of the claimant's multiple disciplines and his knowledge of the employer's policy and his continued refusal to follow it, the administrative law judge concludes that the claimant's acts were deliberate acts or omissions constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evince a willful or wanton disregard of the employer's interests and are, at the very least, carelessness or negligence in such a degree of recurrence all as to establish disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct, and, as a

consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of April 6, 2004, reference 03, amending reference 02, is affirmed. The claimant, Jesse P. Young, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits.

pjs/kjf