

**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**

**DAVID P WELTON  
501 I AVENUE  
GRUNDY CENTER IA 50638**

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

**Appeal Number: 04A-UI-09578-AT  
OC: 08-01-04 R: 03  
Claimant: Appellant (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 96.4-3 – Eligibility for Benefits  
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

David P. Welton filed a timely appeal from an unemployment insurance decision dated August 25, 2004, reference 01, which denied benefits to him upon a finding that he had voluntarily left employment with Tyson Fresh Meats, Inc. without good cause attributable to the employer. After due notice was issued, a telephone hearing was held September 28, 2004 with Mr. Welton participating. Although the employer had provided the name and phone number of a witness, that individual was unavailable when called at the time of the hearing. The employer had no one else to participate. Exhibit A was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: David P. Welton was employed by Tyson Fresh Meats, Inc. first as a truck driver and later as a maintenance worker from May 1998 until August 4, 2004. Mr. Welton spent the last twelve months of his employment on a medical leave of absence. He was removed from the active payroll roster on August 4, 2004 because of a policy which provides that no one is allowed to be on a leave of absence for more than a year.

Mr. Welton has a back injury unrelated to his employment. He is restricted to lifting no more than 20 pounds at this time. He is currently a full-time student studying social work because he is unable to work in any of his previous occupations.

REASONING AND CONCLUSIONS OF LAW:

Two issues are raised in this appeal. The first is whether the separation from employment was a disqualifying event. It was not.

The evidence establishes that the employer initiated the separation from employment on August 4, 2004. Disqualification for benefits is appropriate if, and only if, Mr. Welton was discharged for misconduct in connection with his work. There is no allegation and no evidence of misconduct. A discharge because an individual is medically unable to perform job tasks is not a disqualifying event.

The remaining issue is whether Mr. Welton meets the eligibility requirement of being medically able to work. By his own testimony, he does not.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Mr. Welton testified that because of his back injury he is unable to work in any occupation he has followed in his career. He is currently a full-time student. The administrative law judge concludes that benefits must be withheld until such time as Mr. Welton establishes the existence of some job in his local labor market area consistent with his medical restrictions and for which he has the appropriate job skills.

DECISION:

The unemployment insurance decision dated August 25, 2004, reference 01, is modified. Benefits are withheld until the claimant establishes that he is medically able to work.

tjc/tjc