

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

MARSHALL L HIEDEMAN  
PO BOX 3011  
EVANSDALE IA 50707-0011

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

Appeal Number: 06A-UI-07303-DWT  
OC: 06/18/06 R: 03  
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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Marshall L. Hiedeman (claimant) appealed a representative's July 17, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because he voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 8, 2006. The claimant participated in the hearing. The employer responded to the hearing notice. After the employer was contacted for the hearing, the employer declined to participate 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.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 3, 2002. The claimant worked full-time in maintenance for the rendering department. The claimant worked first shift, or 5:30 a.m. to 6:00 p.m., four days a week.

The claimant has not worked for the employer since March 18, 2006. The claimant has had on-going medical issues since mid-March. While the claimant was not restricted from working by his physician, the employer allowed FMLA to cover an absence when the claimant notified the employer before his shift that he was unable to work as scheduled a particular day. For FMLA to cover the absence, the claimant had to properly call the employer each day he could not work.

In early June, the claimant was on new medication. The new medication caused the claimant to oversleep. Instead of waking up before 5:30 a.m. to call the employer, the claimant slept until 9:00 a.m. or 10:00 a.m. Even after the claimant woke up, he did not call the employer to explain what had happened. The claimant did not call or report to work for over a week.

The claimant's roommate also works for the employer. After the claimant's roommate indicated there was a rumor that the claimant no longer worked for the employer, the claimant called the rendering administrator. The rendering administrator confirmed that the claimant no longer had a job because he violated the employer's attendance policy. The employer assessed the claimant attendance points on days he had not called. When the claimant accumulated too many points, the employer no longer considered him an employee.

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 sections 96.5-1, 2-a. The claimant initiated his employment separation by failing to contact the employer for over a week or providing the employer with any documentation verifying his inability to work. The claimant understood FMLA would only be applied to the days he timely contacted the employer to report he was unable to work. Also even though the claimant overslept, he did not even make any effort to contact the employer late so the employer received no information about problems he had with his medication. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code section 96.6-2.

The claimant had compelling personal reasons for failing to contact the employer for over a week and quitting his employment. The claimant did not, however, quit for reasons that qualify him to receive unemployment insurance benefits.

In the alternative, if the employer discharged the claimant, the evidence indicates the employer discharged the claimant for work-connected misconduct. 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 law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 AC 24.32(7). The claimant knew his absence would be covered under FMLA only if he contacted the employer each day he was unable to work. The claimant intentionally disregarded the employer's interests when he failed to notify the employer for over a week.

Under either scenario, the claimant is disqualified from receiving unemployment insurance benefits as of June 18, 2006.

#### DECISION:

The representative's July 17, 2006 decision (reference 01) is affirmed. The claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of June 18, 2006. This disqualification continues until he earns ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/cs