

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

MARIO MUJICA  
3819 S 24<sup>TH</sup> ST  
OMAHA NE 68107

TYSON FRESH MEATS INC  
C/O TALX – UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-08181-SWT  
OC: 07/10/05 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, 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  
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 1, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 30, 2005. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Susan Pfeifer participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer as a supervisor trainee from January 28, 2002, to July 1, 2005. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer 30 minutes before the start of the shift if they were not able to work as scheduled. The claimant

was counseled regarding his reporting to work late on April 15, 2005, after he was late for work on April 4 and April 8 due to oversleeping.

On July 1, 2005, the claimant was scheduled to report to work at 6:30 a.m. He reported to work at 11:00 a.m. and claimed that he was late because of a broken tie rod on his vehicle. The claimant did not properly notify the employer regarding reporting to work late. On July 2, 2005, the claimant failed to report to work as scheduled at 6:30 a.m. The supervisor called the claimant to find out why he was not at work. The claimant told the supervisor that he had overslept. The employer discharged the claimant for excessive unexcused absenteeism on July 2, 2005.

The claimant filed for and received a total of \$1,944.00 in unemployment insurance benefits for the weeks between July 2 and August 20, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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).

The claimant's excessive unexcused absenteeism was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$1,944.00 in unemployment insurance benefits for the weeks between July 2 and August 20, 2005.

#### DECISION:

The unemployment insurance decision dated August 1, 2005, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$1,944.00 in unemployment insurance benefits, which must be repaid.

saw/kjw