

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

CHRISTI A TAKES
118 – 2ND ST NE
OELWEIN IA 50662

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

Appeal Number: 05A-UI-08162-DWT
OC: 07/10/05 R: 04
Claimant: Respondent (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, 4th 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:

Tyson Retail Deli Meats, Inc. (employer) appealed a representative's August 1, 2005 decision (reference 01) that concluded Christi A. Takes (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known address of record, a telephone hearing was held on August 25, 2005. The claimant participated in the hearing. Brooke Salger, the human resource manager, appeared on the employer's behalf. During the hearing, Employer's Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, 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 May 10, 2005. The claimant worked as a full-time production worker. As a new hire, the claimant had to satisfactorily complete a 90-day probation. At the time of hire the claimant received information about the employer's attendance policy. The employer's policy indicates a probationary employee will be discharged if the employee accumulates more than five attendance points during the first 90-day of employment.

On July 1, 2005, the claimant received written notification that as of June 30 she had accumulated three attendance points. The claimant had two points after notifying the employer she either would be late for work or had to leave work early. The claimant also received a half point for being 30 minutes late on May 20 and leave work early because of a sick child. On July 1, the claimant had to leave work early again because of a sick child. The employer assessed a half point for this absence. (Employer's Exhibit 1, pages 3, 4 and 6.)

On July 7, after work had a fight with her boyfriend, who also worked for the employer. The police arrested the claimant and put her in jail. The claimant notified the employer that she was unable to report to work on July 8 at 6:00 a.m. because she was in jail. The claimant was released from jail before noon, but she had a restraining order that prevented her from reporting to work. At 2:00 p.m., the claimant's restraining order was amended so she could work.

The employer considered the reasons for the claimant's July 8 absence unexcused. As a result, the employer assessed the claimant three-attendance points. On July 11, the employer informed the claimant she was discharged for unsatisfactory attendance during her probation. (Employer's Exhibit One, page 5.)

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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 IAC 24.32(7).

On July 1, 2005, the claimant knew or should have known her job was in jeopardy if she had two more attendance points for a total of five. The evening of July 7, the claimant engaged in off-duty conduct that led to her arrest. Even though the claimant notified the employer that she was unable to work as scheduled on July 8, the reason for her absence was not excused because the claimant was in jail. Unfortunately, the claimant let her emotions instead of common sense control her actions. Since the claimant was a probationary employee and had already received a notice about her attendance, the employer established compelling business reasons for discharging the claimant. Even though the claimant should have realized her conduct the evening of July 7 could lead to her arrest, the claimant did not plan the fight. The evidence does not establish that she intentionally and substantially disregarded the employer's interests. After the claimant received the restraining order she took immediate steps to have the restraining order amended so she could work. As of July 10, 2005, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base-period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's August 1, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct.

dlw/pjs