

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

LEONEL A MAGANA  
1003 LUCINDA ST #1  
PERRY IA 50220

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

Appeal Number: 06A-UI-00156-CT  
OC: 11/13/05 R: 02  
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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (Tyson) filed an appeal from a representative's decision dated December 30, 2005, reference 01, which held that no disqualification would be imposed regarding Leonel Magana's separation from employment. After due notice was issued, a hearing was held by telephone on January 24, 2006. Mr. Magana participated personally. The employer participated by Tom Barragan, Employment Manager, and Mike Cleaver, Training Coordinator.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Magana was employed by Tyson from July 21, 2003 until November 14, 2005 as a full-time production worker. He was discharged for being verbally abusive towards a coworker and for violating other work rules.

On November 10, Mr. Magana asked a coworker where she had been and she responded by saying he was not her supervisor. Mr. Magana then said "fuck you," a comment that was overheard by a supervisor. He later stopped the supervisor and began yelling and pointing his finger at her, apparently because she had reported to management his comment to the coworker. Because he had been disciplined for other matters during the preceding 12 months, Mr. Magana was discharged on November 14, 2005.

On December 3, 2004, Mr. Magana received a written warning and suspension after he picked meat up from the floor and put it back on the line. He knew there was a process contaminated meat had to go through before being put back into production. On June 4, 2005, he received a written warning for not wearing safety glasses. He had them off because they were fogged over. Mr. Magana received a written warning on June 14, 2005 for having gum on the production floor. Food is not allowed on the floor because of the possibility it could fall into product.

Mr. Magana has been paid a total of \$2,992.00 in job insurance benefits since filing his claim effective November 13, 2005

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Magana was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Magana's conduct in saying "fuck you" to a coworker constituted a substantial disregard of the standards of behavior the employer had the right to expect. This was not a case in which profanity was simply used in the presence of the coworker. Mr. Magana was apparently angry that the coworker would not tell him where she had been. The employer had the right to expect that Mr. Magana would treat his workers with courtesy and civility. His conduct of November 10 was the final event in a series of infractions that displayed a disregard for the employer's rules. Mr. Magana had gum or candy on the production floor in violation of a known rule. He had picked meat off the floor and placed in back in production in spite of knowing that he should not.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied. Mr. Magana has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated December 30, 2005, reference 01, is hereby reversed. Mr. Magana was discharged by Tyson for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Magana has been overpaid \$2,992.00 in job insurance benefits.

cfc/kjf