

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

TERRY W DARLAND  
624 BURBANK AVE  
WATERLOO IA 50702

TYSON FRESH MEATS INC  
% TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-06210-CT  
OC: 05/15/05 R: 03  
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, 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

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (Tyson) filed an appeal from a representative's decision dated June 2, 2005, reference 01, which held that no disqualification would be imposed regarding Terry Darland's separation from employment. After due notice was issued, a hearing was held by telephone on June 30, 2005. Mr. Darland participated personally and offered additional testimony from Eric Hansen. The employer participated by Dave Duncan, Employment Manager.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Darland was employed by Tyson from April 24, 1995 until May 17, 2005 as a full-time production worker. He was discharged after receiving a series of warnings.

On September 27, 2004, Mr. Darland was counseled because he left the key in an unattended pallet jack, also known as a mule. The key is to be removed to prevent unauthorized persons from operating the mule. On September 22, 2004, he received a written warning because meat was placed in a cracked container, resulting in the possible contamination of the meat. Mr. Darland received a written warning on March 8, 2005 because of an issue surrounding his mule license. The procedure is for the driver to exchange his license for a key to the mule at the start of the shift and then retrieve the license when returning the key at the end of the shift. There is not always someone available to facilitate the exchange of keys and licenses. The employer was unsure as to what the specific problem was that resulted in the warning of March 8.

Mr. Darland's next warning was on May 4, 2005 when he again left the key in an unattended mule. On May 5, he was warned and suspended because he failed to put a quality control label on a container of meat. The final incident that triggered the discharge occurred on May 10 when he failed to put the processing ending time on a container of meat. Mr. Darland was notified of his discharge on May 17, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Darland 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. Darland was discharged after a series of warnings. He had two warnings for leaving the key in an unattended mule. The two incidents were approximately eight months apart. There was one occasion on which he put meat in a cracked container. There were two occasions on which Mr. Darland failed to put appropriate labels on containers.

The administrative law judge does not believe Mr. Darland deliberately or intentionally failed to put labels on product or that he deliberately left the key in an unattended mule. At most, he was negligent on the occasions identified by the employer. Negligence constitutes disqualifying misconduct only if it is so recurrent as to manifest an intentional disregard for the employer's standard. 871 IAC 24.32(1). In the case at hand, the acts complained do not, either individually or in combination, constitute a substantial disregard for the employer's interests or standards. Each incident represents a minor lapse in good performance. For the reasons stated herein, it is concluded that disqualifying misconduct has not been established. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983).

DECISION:

The representative's decision dated June 2, 2005, reference 01, is hereby affirmed. Mr. Darland was discharged by Tyson but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf