

**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**

**ORIAM A AKWAI  
1300 ONEIDA ST  
STORM LAKE IA 50588-1954**

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

**Appeal Number: 06A-UI-03624-CT  
OC: 03/05/06 R: 01  
Claimant: Appellant (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

STATEMENT OF THE CASE:

Oriem Akwai filed an appeal from a representative's decision dated March 27, 2006, reference 01, which denied benefits based on his separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on April 19, 2006. Mr. Akwai participated personally. The employer participated by Will Sager, Human Resources Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

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. Akwai was employed by Tyson from June 8,

2004 until March 10, 2006 as a full-time production worker. He was discharged because of his attendance. Attendance is tracked on a point system and an individual is subject to discharge when he accumulate 14 points.

Mr. Akwai was absent without calling in on May 2, 2005 because he was in jail. He was late due to a court appearance on May 3, 2005. Thereafter, and until March 6, 2006, all of Mr. Akwai's absences were due to either his own illness or that of a family member or were arranged in advance. On March 6, 2006, he called to report that he would be absent because he did not have child care. He did not have child care because his wife had been unexpectedly stranded in Minnesota. Mr. Akwai was notified of his discharge on March 10. Attendance was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Akwai 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). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Absences that are for reasonable cause and are properly reported are considered excused absences.

Mr. Akwai's absences of May 2 and May 3, 2005 are unexcused as they were due to a personal matter, his incarceration and court appearance. He did not have any other unscheduled absences for personal matters until March 6, 2006. Ordinarily, absences caused by matters of personal responsibility, such as child care, are not excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). However, Mr. Akwai did not have a history of missing work due to lack of child care. Moreover, his lack of child care on March 6 was due to the fact that his wife was unexpectedly detained out of town. Given these factors, the administrative law judge concludes that the absence of March 6, 2006 should be considered excused.

After considering all of the evidence, the administrative law judge concludes that Mr. Akwai's two unexcused absences in May of 2005 are not sufficient to establish excessive unexcused absenteeism within the meaning of the law. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). Benefits are allowed.

#### DECISION:

The representative's decision dated March 27, 2006, reference 01, is hereby reversed. Mr. Akwai was discharged by Tyson but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/tjc