

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

CRUZ MONGE
114 AVE B
DENISON IA 51442

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

Appeal Number: 05A-UI-02409-SWT
OC: 01/30/05 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, 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:

The employer appealed an unemployment insurance decision dated March 1, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 28, 2005. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Jeff Houston participated in the hearing on behalf of the employer with a witness, Richard Thompson.

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from December 15, 2003 to December 8, 2004. He was informed and understood that employees were not allowed to leave work early without permission from a supervisor or act insubordinately towards a supervisor.

The claimant was scheduled to work from 6:00 a.m. to 10:00 a.m. on December 8, 2004. The claimant had applied for a job with another employer. He had a doctor's appointment to take a physical for the job scheduled for the morning of December 8. The claimant approached his supervisor and asked if he could leave work at 8:30 a.m. for his doctor's appointment. When the supervisor discovered that the doctor's appointment was for a physical for another job, he told the claimant that he should reschedule the appointment for a different time. He told the claimant that he needed to stay at work until 10:00 a.m. because leaving work to take a physical for another job was not considered a legitimate reason for leaving work. The claimant told his supervisor that he would think about it. A short time later, the claimant told his supervisor that he was leaving work early to go to his doctor's appointment. The claimant's supervisor told him that he did not have permission to leave, but the claimant left work anyway.

The claimant did not report to work or call in to notify the employer that he would not be at work on December 9, 2004. The claimant reported to work sometime the next week. The employer notified the claimant that he was discharged because he had left work without permission from his supervisor and without a legitimate reason for missing work. He was considered to have abandoned his job.

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 conduct 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. He failed to obey a direct order from his supervisor to stay at work. Leaving work to take a physical for another job would not be considered a legitimate reason for leaving work. The claimant should have rescheduled the doctor's appointment for a time that would not have conflicted with his work schedule. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated March 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.

saw/kjf