

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

JORGE C VILLANUEVA  
910 MULBERRY ST  
WATERLOO IA 50703

TYSON FRESH MEATS INC  
c/o THE FRICK COMPANY  
PO BOX 283  
ST LOUIS MO 63166-0283

**NUNC PRO TUNC**  
**05O-UI-08268-H2T**  
**Appeal Number:**  
**OC: 05-22-05 R: 03**  
**Claimant: Appellant (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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 10, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 30, 2005. The claimant did participate through the interpretation of Rosemary Paramo Ricoy. The employer did not participate. The employer provided the name of Dave Duncan and his phone number, but Mr. Duncan was not available when called by the administrative law judge at the time of the hearing.

## FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a production worker full time beginning July 29, 2003 through January 25, 2005 when he was discharged. The claimant was discharged on January 25, 2005 because he did not have a valid work permit that would allow him to work in the United States any longer. The claimant's work permit expired on January 25, 2005 and he was no longer legally allowed remain in the employee of Tyson. Since his discharge the claimant has applied for and been granted a renewal of his work permit.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

Where an individual's own conduct renders him unemployable by his own employer, he is guilty of misconduct with the meaning of the law. See Cook v. IDJS, 299 N.W.2d 698 (Iowa 1980). The claimant knew that he had to have a valid work permit to continue his employment with Tyson. The claimant is required to maintain a work permit that allows him to work legally in the United States, otherwise the employer cannot legally continue his employment. It was within the claimant's control as to when he applied to have his work permit renewed. He has not established any good cause for failing to renew his work permit. The claimant's excuse that he was not making enough money to renew his permit is not credible in light of the fact that he has worked nowhere since January 25 but has found the money and time to make application for a new work permit. Similarly unpersuasive is the claimant's argument that he was discharged because of a work related injury. The claimant sustained the injury months before his discharge and he was provided with treatment and allowed to continue working. More persuasive is the fact that the claimant could not continue working because he had no valid work permit. Because it was the claimant's own actions which prevented the employer from continuing the employment, the administrative law judge concludes that disqualifying misconduct has been established. Benefits are denied.

#### DECISION:

The June 10, 2005, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

tkh/pjs/pjs