

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

BIAH T CHUNG  
1914 CLIFTON AVE  
WATERLOO IA 50707

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

Appeal Number: 04A-UI-12123-CT  
OC: 10/10/04 R: 03  
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 October 29, 2004, reference 01, which held that no disqualification would be imposed regarding Biah Chung's separation from employment. After due notice was issued, a hearing was held by telephone on December 7, 2004. The employer participated by Dave Duncan, Employment Manager. Exhibits One and Two were admitted on the employer's behalf. Mr. Chung responded to the notice of hearing and six attempts were made to reach him at the scheduled time of the hearing. However, his telephone line remained busy through all six attempts.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Chung was employed by Tyson from June 17, 2003 until September 3, 2004 as a full-time production worker. He was discharged for repeated violations of the employer's safety standards.

On September 11, 2003, Mr. Chung received a written warning because he was not wearing the belly guard required for use when using a knife. The belly guard is provided by the employer. On April 8, 2004, Mr. Chung received two written warnings. One of the warnings was for washing his hands in 180-degree water in violation of posted warnings. He was wearing protective gloves at the time. The employer prohibits using the water for hand washing because it may result in second-degree burns if there is a hole in the glove or if the water gets inside the glove. The second warning of April 8 was due to the fact that Mr. Chung left his saw running when he went on break. Mr. Chung received a written warning on May 12, 2004 because he turned away from the production line and was scraping his knife on the floor. Production employees are required to be facing the line at all times. If there are problems with knives, they are to be turned in so that the employer can take care of any defects or sharpen them.

The final incident, which triggered the discharge, occurred on August 31, 2004. Mr. Chung was throwing bones in the air and trying to catch them with his knife. The knives are only to be used for cutting product, not for horseplay. This conduct was witnessed by the supervisor. Mr. Chung was notified of his discharge on September 3, 2004.

Mr. Chung has received a total of \$2,288.00 in job insurance benefits since filing his claim effective October 10, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Chung 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. Chung was discharged for violating the employer's safety standards. His failure to use the belly guard in September of 2003 could have resulted in injury to himself since he used a knife in the performance of his job. The evidence does not establish any good reason for his failure to wear the guard. Mr. Chung could have caused injury to his hands by washing them in 180 degree water on April 8. The employer has posted a sign warning employees not to use the water to wash hands. Therefore, Mr. Chung had to have known that his actions were contrary to the employer's standards. His failure to turn his saw off when he went to break on April 8 could have caused injury to others if someone had attempted to use it without first making sure that it was turned off. Mr. Chung also knew that he was supposed to remain facing the line on May 12.

Given his prior warnings, Mr. Chung knew or should have known the repeated safety violations could result in his discharge from Tyson. In spite of the prior warnings, he again violated the employer's safety standards on August 31. He was engaging in horseplay by throwing bones in the air and trying to catch them with his knife. His actions could have resulted to injury to himself or to others in the area if he made the wrong move. Mr. Chung engaged in a course of conduct which was contrary to the employer's standards and interests. Unsafe work habits

could potentially expose the employer to legal liability if an accident occurred as a result of the unsafe work habits. For the reasons stated herein, the administrative law judge concludes that the employer has satisfied its burden of proving substantial misconduct. Accordingly, benefits are denied.

Mr. Chung 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 October 29, 2004, reference 01, is hereby reversed. Mr. Chung was discharged 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. Chung has been overpaid \$2,288.00 in job insurance benefits.

cfc/kjf