

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

JESSE J BIRMINGHAM
1215 FARNAM ST
DAVENPORT IA 52803-4400

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

Appeal Number: 06A-UI-04355-CT
OC: 03/26/06 R: 04
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, 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 for Misconduct

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (Tyson) filed an appeal from a representative's decision dated April 14, 2006, reference 01, which held that no disqualification would be imposed regarding Jesse Birmingham's separation from employment. After due notice was issued, a hearing was held by telephone on May 9, 2006. Mr. Birmingham participated personally. The employer participated by Tom Barragan, Employment Manager.

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. Birmingham began working for Tyson on January 13, 2005, as a full-time maintenance mechanic. He went on a medical leave of

absence on December 15, 2005. On January 14, 2006, he spoke with the employer and indicated he had not been released to return to work. He was told to return when he was released. Mr. Birmingham was not asked to provide any additional documentation of the need to be absent.

On February 8, the employer sent a letter to Mr. Birmingham indicating that his leave expired on February 6, 2006, and he had to return to work. Mr. Birmingham responded to the letter and was advised that he no longer had employment as the employer was not able to hold his job open. He was released to return to work on March 26 and called the employer on March 27. The employer did not offer him work at that point. Therefore, Mr. Birmingham filed a claim for job insurance benefits effective March 26, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Birmingham was separated from employment for any disqualifying reason. He was discharged because he had not been released to work when his leave of absence expired. 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. Birmingham was off work for medical reasons and had not been released by his doctor as of the date of discharge. Since all of the absences beginning December 11, 2005, were for medical reasons, they are excused. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. For the above reasons, no disqualification is imposed.

Mr. Birmingham would also be entitled to benefits pursuant to Iowa Code section 96.5(1)d. He left work on the advice of a doctor, notified the employer of the need to be absent, and re-offered his services to the employer once he recovered. Since no work was available when he re-offered his services on March 27, benefits would be allowed.

DECISION:

The representative's decision dated April 14, 2006, reference 01, is hereby affirmed. Mr. Birmingham was separated from Tyson for no disqualifying reason. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kkf