

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

SIMON M GATCHAAK
5503 S 30TH ST
OMAHA NE 68107

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

Appeal Number: 04A-UI-01464-CT
OC: 01/04/04 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 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 February 3, 2004, reference 01, which held that no disqualification would be imposed regarding Simon Gatchaak's separation from employment. After due notice was issued, a hearing was held by telephone on March 4, 2004. The employer participated by Doug Meister, Assistant Operations Manager, and Susan Pfeifer, Human Resources Manager.

Records of Workforce Development indicate that Mr. Gatchaak or someone acting on his behalf contacted the Appeals Section to provide a telephone number to participate in the hearing. A

control number of 263 was given. The telephone number recorded by the Appeals Section was recorded incorrectly. When the number was called for the hearing, it indicated that the number had been disconnected or was no longer in service. The administrative law judge then checked other records of Workforce Development and discovered that the correct number was (402) 917-6944. An attempt was made to contact Mr. Gatchaak at that number but the number was answered by a machine and a voice message was left. On March 10, 2004, Mr. Gatchaak contacted the administrative law judge and indicated that he had just received the hearing notice that day when it was given him by his roommate, unopened. He denied that he had called the Appeals Section previously to provide a telephone number. He confirmed that (402) 917-6944 is his correct telephone number. The administrative law judge did not believe his contention that he had just received the hearing notice that day and, therefore, declined to reopen the hearing record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Gatchaak began working for Tyson on January 24, 2002 as a full-time production worker. On October 9, 2002, he won a bid for the job of trimmer and still "owned" that job at the time of separation. There were occasions on which Mr. Gatchaak performed other jobs within Tyson before reporting for his regular shift as a trimmer.

On January 5, Mr. Gatchaak was instructed to perform his normal job of trimmer, but he refused and indicated that he wanted to be moved to a different job. He was advised that he had to perform his normal job but he again refused. He did not give any reason for wanting to be moved to a different job. Mr. Gatchaak was advised that refusing to perform his assigned work could result in his discharge. When he refused to perform work as a trimmer when asked a third time, he was suspended from work. He was notified of his discharge on January 8, 2004.

Mr. Gatchaak had been seen in health services on January 4, 2004 complaining of a sore hand. He stated that using the hook hurt his fingers. The job he was being asked to perform on January 5 did not require use of the hook. Mr. Gatchaak did not have any medical restrictions at the time of separation.

Mr. Gatchaak has received a total of \$2,450.00 in job insurance benefits since filing his claim effective January 4, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Gatchaak 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 in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Gatchaak was discharged for refusing to obey a reasonable directive from management. An individual's refusal or failure to perform a certain task does not constitute misconduct if the refusal or failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768 (Iowa App. 1982). The employer has established that Mr. Gatchaak was given a directive to perform his normal job. The employer has also established that he did not have any medical restrictions which would have prevented him from performing the job. It then became Mr. Gatchaak's burden to establish that he had good cause for refusing to work as a trimmer. He has failed to

establish that performing work as a trimmer posed a threat to his health or safety. He has failed to establish that the work he was being asked to perform on January 5 would have aggravated whatever problems he was experiencing on January 4. For the above reasons, the administrative law judge concludes that Mr. Gatchaak's refusal to perform assigned work was neither in good faith nor for good cause. Therefore, the refusal constituted a substantial disregard of the standards the employer had the right to expect. Accordingly, benefits are denied.

Mr. Gatchaak 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 February 3, 2004, reference 01, is hereby reversed. Mr. Gatchaak 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. Gatchaak has been overpaid \$2,450.00 in job insurance benefits.

cfc/b