

**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**

**JOHN K ROUSSEL
368 SUN COURT
SUN PRAIRIE WI 53590**

**TYSON RETAIL DELI MEATS INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-04891-SWT
OC 03/28/04 R 12
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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 19, 2004, reference 01, that concluded his discharge was for work-connected misconduct. A telephone hearing was held on May 27, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Brooke Salger participated in the hearing on behalf of the employer. Exhibits One through Four were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a laborer from June 11, 2003 to January 3, 2004. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and employees were assessed points for unscheduled absences and tardiness and subject to termination if they reach 14 points. Under the policy that is posted, and the claimant

acknowledged being responsible for reading, an employee who is late two hours or more receives one point, and if late less than two hours receives a half point.

On November 11, 2003, the claimant received a warning because he was at 9 points after he was absent on November 7 without proper notice to the employer. On November 24, 2003, the claimant received a warning because he was at 12 points after calling in for personal reasons on November 10 and calling in sick on November 14 and 22.

On December 5, 2003, the claimant called in sick and received a point. He knew at that point that he had 13 points and would be discharged if he received one more point. On the afternoon of January 2, 2004, the claimant received a call from his probation officer stating that the claimant had missed an earlier appointment and had to come in for a meeting that afternoon. To attend the appointment, the claimant knew that he was going to be late for work. He called in and notified the employer that he was going to be late for work. The claimant was scheduled to work at 4:00 p.m. and arrived at work around 6:00 p.m. (a group leader listed him as on the line at 6:00 p.m.) but he forgot to punch in until 6:18 p.m. As a result, the claimant was discharged on January 5, 2004, because the employer considered the claimant over two hours late and assessed him one point.

The claimant's absence record includes times when he missed work or left work early due to personal reasons and times when he called in sick but was not actually ill.

REASONING AND CONCLUSIONS OF 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, (7) 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).

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant's excessive unexcused absenteeism was 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. The final incident of lateness was due to the claimant's own fault in missing a scheduled appointment with his probation officer. The claimant had received two prior warnings about his attendance and knew that his job was on the line. The claimant's testimony that he was scheduled to work at 4:30 p.m. is not credible and he has not proven that he arrived at work any earlier than 6:00 p.m. His previous absences were not all for excusable reasons. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated April 19, 2004, reference 01, is affirmed. 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/b