

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

ALMA R MORRIS
729 W CEDAR #401
CHEROKEE IA 51012

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

Appeal Number: 04A-UI-01662-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 9, 2004, reference 01, which held that no disqualification would be imposed regarding Alma Morris' separation from employment. After due notice was issued, a hearing was held on March 19, 2004. Ms. Morris participated personally. The employer participated by Jim Petzoldt, Human Resources Manager. Guadalupe McCarney participated as the interpreter.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Morris began working for Tyson on May 20, 2003 as a full-time production employee. She was discharged because of her attendance. She received warnings about her attendance on October 20 and November 22.

Ms. Morris called the employer on December 9, 10, and 11 and reported that she would be absent because she did not have a ride to work. She did not call on December 12, 13, and 15. When she reported to the workplace on December 16, she was notified that she no longer had employment. Ms. Morris was aware of the employer's work rules as they had been explained to her in Spanish during orientation.

Ms. Morris has received a total of \$1,953.00 in job insurance benefits since filing her claim effective January 4, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Morris 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). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences.

Ms. Morris' absences of December 9, 10, and 11 are unexcused as they were due to matters of purely personal responsibility, transportation. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Ms. Morris acknowledged that she told the employer on the three separate dates listed above that she was absent due lack of transportation. Therefore, her contention during the hearing that the absences of December 9, 10, and 11 were due to illness was not credible. The absences of December 12, 13, and 15 are also unexcused. They are unexcused because they were not properly reported to the employer. Even without considering the absences of December 12, 13, and 15, Ms. Morris still had three consecutive unexcused absences on December 9, 10, and 11. She had been warned about her attendance and knew what her attendance point status was. The administrative law judge considers three consecutive unexcused absences to be excessive, especially in view of Ms. Morris' relatively short period of employment. It is concluded, therefore, that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Ms. Morris has received benefits since filing her 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 9, 2004, reference 01, is hereby reversed. Ms. Morris was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Morris has been overpaid \$1,953.00 in job insurance benefits.

cfc/s