

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

DWAYNE D LOWE
2442 – 11TH AVE SE
CEDAR RAPIDS IA 52403

TYSON RETAIL DELI MEATS INC
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-11309-AT
OC: 10-09-05 R: 03
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
Section 96.6-2 – Burden of Proof

STATEMENT OF THE CASE:

Tyson Retail Deli Meats, Inc., filed a timely appeal from an unemployment insurance decision dated October 24, 2005, reference 01, which allowed benefits to Dwayne D. Lowe. Due notice was issued for a telephone hearing to be held November 15, 2005. Neither party responded to the hearing notice. This decision is based on information in the administrative file and in the employer's appeal letter.

FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: Tyson Retail Deli Meats, Inc. discharged Dwayne D. Lowe on July 22, 2005. Although the employer has sighted attendance problems as the cause of the discharge, it has provided no information as to the number or the dates of the occurrences.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his work. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. An employer must provide some detailed evidence, not mere conclusions of improper behavior. See 871 IAC 24.32(2). In both its protest and appeal letter, the employer stated that the claimant was discharged because of "excessive absenteeism and tardiness." No further detail was provided. This evidence is not sufficient to meet the employer's burden of proof. Benefits are allowed.

DECISION:

The unemployment insurance decision dated October 24, 2005, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

kkf/kjw