

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

VELIA CRUZ
204 BIRCH
PO BOX 12
NEMAHA IA 50567

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

Appeal Number: 04O-UI-08847-CT
OC: 05/16/04 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 June 1, 2004, reference 01, which held that no disqualification would be imposed regarding Velia Cruz' separation from employment. After due notice was issued, a hearing was held by telephone on July 9, 2004. The July 21, 2004 decision of the administrative law judge reversed the allowance and Ms. Cruz appealed. On August 13, 2004, the Employment Appeal Board remanded the matter for a new hearing because the tape of the prior hearing could not be transcribed.

Pursuant to the remand, due notice was issued scheduling the matter for a telephone hearing on September 9, 2004. The employer responded to the notice of hearing. Ms. Cruz did not

respond to the notice of hearing. An attempt was made to contact her at the number provided for the July 9, 2004 hearing. The number was that of a neighbor and a message was left for Ms. Cruz. She did not contact the Appeals Section in response to the message. The employer opted to rely on the facts found by the administrative law judge from the hearing of July 9, 2004. For the above reasons, no hearing was held.

FINDINGS OF FACT:

The Findings of Fact as outlined in the July 21, 2004 decision of Judge Teresa Hillary are hereby incorporated as though fully set forth herein.

REASONING AND CONCLUSIONS OF LAW:

The Reasoning and Conclusions of Law as set forth by Judge Hillary are hereby incorporated as though fully set forth herein.

DECISION:

The representative's decision dated June 1, 2004, reference 01, is hereby reversed. Ms. Cruz was discharged by Tyson 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. Cruz has been overpaid \$2,373.00 in job insurance benefits.

cfc/pjs