

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

ANTHONY W SILL
302 – 6TH ST
PO BOX 779
OAKVILLE IA 52646

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

Appeal Number: 04A-UI-08679-CT
OC: 07/11/04 R: 04
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 August 3, 2004, reference 01, which held that no disqualification would be imposed regarding Anthony Sill's separation from employment. After due notice was issued, a hearing was held by telephone on September 2, 2004. Mr. Sill participated personally and offered additional testimony from Tina Sill and Lisa Hays. Exhibit A was admitted on Mr. Sill's behalf. The employer participated by Kris Travis, Employment Manager. Exhibit One was admitted on the employer's behalf.

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. Sill was employed by Tyson from June 23, 2003 until July 13, 2004 as a full-time maintenance mechanic. He was discharged for falsifying a doctor's statement.

Mr. Sill last worked on June 30, 2004 and was absent thereafter due to a car accident. On July 9, he presented a doctor's statement to the company nurse indicating he was released to full duty. The date on the statement appeared to have been altered and Mr. Sill was questioned regarding the matter. He was given an opportunity to obtain clarification from the doctor's office. On or about July 12, Mr. Sill presented a new note from the doctor which stated that he had been seen on July 6 and released to return to work. The note further indicated that the note given on July 6 was not false. The doctor also wrote an additional note on July 12 which indicated that the document from July 6, 2004 was not a false document. The doctor indicated on the note, "probable date change." The employer contacted the doctor's office on July 13 and the doctor's office denied that any alterations had been made by the doctor on the note given to Mr. Sill on July 6. The doctor's file copy of the excuse given to Mr. Sill on July 6 is dated July 6, 2004. However, it is not a duplicate of the statement Mr. Sill gave the employer. The document he gave the employer states: "ok to return to work full duty." The file copy states: "return to work ok full duty."

Mr. Sill was scheduled to work on July 6 and July 7. He was scheduled off on July 8 and July 9. He had been calling in to report his absences on a daily basis after the car accident of June 30, 2004.

Mr. Sill has received a total of \$1,932.00 in job insurance benefits since filing his claim effective July 11, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Sill 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. Sill was discharged for falsifying a doctor's statement. The document provided to the employer was clearly altered. The "6" in the date had been changed to an "8." Mr. Sill contends that the doctor made the change, a contention denied by the doctor when contacted by the employer on July 13. The notes written by the doctor on July 12 do not clarify the matter.

On one statement dated July 12, the doctor indicates that the note given on July 6 was not false. Nowhere in the note does the doctor acknowledge even the possibility that the date was changed by the doctor. The doctor does not indicate that the date of July 8 was not a falsification by Mr. Sill. In short, it is unclear as to whether the doctor is referring to the note as originally written by her or the note as it appeared when given to the employer. The doctor indicates in another statement of July 12 that the statement of July 6 was not a false document. The administrative law judge's observations regarding this statement are the same as those for the other July 12 statement. Conspicuously missing from the doctor's July 12 statements is any indication that Mr. Sill, when seen on July 6, was not released to return to work until July 8. One of the statements from July 12 indicates that Mr. Sill was seen on July 6 and released to

work. Absent any indication on the statement that the release was effective at some later date, the administrative law judge must presume that the release was effective July 6, the day of treatment.

Given the fact that the doctor has not confirmed the possibility that she changed the date and given the fact that the doctor denied to the employer that she had changed the date, the administrative law judge must conclude that Mr. Sill altered the date. He apparently changed the date to have additional time off from work. The employer had the right to expect honesty from Mr. Sill and he breached that obligation when he deliberately and intentionally changed his doctor's statement in order to take additional time off work when such time off was not medically necessary.

After considering all of the evidence, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied. Mr. Sill 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 August 3, 2004, reference 01, is hereby reversed. Mr. Sill 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. Sill has been overpaid \$1,932.00 in job insurance benefits.

cfc/kjf