

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

NASSIR F ABBO
Claimant

APPEAL NO. 08A-UI-04464-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 03/09/08 R: 12
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

Nassir Abbo filed an appeal from a representative's decision dated April 21, 2008, reference 02, which denied benefits based on his separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on May 29, 2008. Mr. Abbo participated personally. The employer participated by Susan Pfeifer, Human Resources Manager. Mr. Abbo's sister, Souksma Wade, participated as the interpreter.

ISSUE:

At issue in this matter is whether Mr. Abbo was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: The representative's decision that is the subject of this appeal was mailed to Mr. Abbo at his address of record on April 21, 2008. He did not receive the decision. He filed an appeal on May 8, 2008 after speaking with a representative at his local Workforce Development office.

Mr. Abbo was employed by Tyson from August 26, 2004 until February 14, 2008 as a full-time production worker. He was discharged because his work authorization expired. Although he was in the country legally, he could not provide proof that he was authorized to work in the United States. The employer is prohibited from hiring an individual who is not a citizen or is not legally authorized to work in the United States. The lack of a valid work authorization was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether Mr. Abbo's appeal should be deemed timely filed. He had ten days in which to appeal from the disqualifying representative's decision. See Iowa Code section 96.6(2). Since he did not receive the decision, he could not have perfected

an appeal by the designated due date. For the above reasons, the appeal filed on May 8, 2008 shall be deemed timely filed.

Mr. Abbo was released from his job with Tyson solely because he could not provide proof that he was legally authorized to work in the United States. The employer could not provide him with work without breaking the law. The failure to maintain a valid work authorization was contrary to the type of behavior the employer had the right to expect. Because Mr. Abbo was not employable by Tyson as of February 14, 2008, he is not entitled to job insurance benefits pursuant to Iowa Code section 96.5(2)a.

DECISION:

The representative's decision dated April 21, 2008, reference 02, is hereby affirmed. Mr. Abbo was discharged by Tyson 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.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw