

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

ROGER A PAULSON  
305 W 3<sup>RD</sup>  
STORM LAKE IA 50588

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

Appeal Number: 05A-UI-07383-SWT  
OC: 06/05/05 R: 01  
Claimant: Appellant (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 8, 2005, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on August 11, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Will Sager participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer as a maintenance worker from April 9, 2001, to June 7, 2005. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination if they received 14 attendance points in a 12-month period. Points are given for unapproved absence and tardiness as follows (excused means properly reported): excused absence (one point), unexcused absence (three points), excused

tardy of less than two hours (one half point), excused tardy of two or more hours (one point), and unexcused tardy of less than two hours (one point), and unexcused tardy of two or more hours (two points).

The claimant received points for the following reasons in 2004: June 13 (excused absence for illness), June 16 (unexcused tardy of two or more hours), October 31 (excused absence for illness), November 8 (excused absence for illness), and December 7 (excused absence for illness). He received points for the following reasons in 2005: March 9 (unexcused tardy of less than two hours), February 8 (excused absence for illness), March 13 (excused absence for illness), April 3 (unexcused tardy of less than two hours), May 3 (unexcused tardy of less than two hours), May 18 (unexcused tardy of less than two hours), and May 31 (unexcused tardy of less than two hours).

On May 31, 2005, the claimant was scheduled to work at 4:00 a.m. He overslept because his alarm was set wrong. He reported to work at approximately 6:30 a.m. without proper notice. As a result, the claimant was given two attendance points, which gave the claimant 14 attendance points. As a result of the claimant's excessive absenteeism in violation of the employer's attendance policy, the employer discharged him on June 7, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency,

unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant's excessive unexcused absenteeism was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The final four incidents for which the claimant received points were all tardiness due to oversleeping, which is not an excused reason for being late for work. The fact that the employer exercises some discretion in terminating employees who violate the attendance policy does not mean the policy is not enforced. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

#### DECISION:

The unemployment insurance decision dated July 8, 2005, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

saw/pjs