

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

CARL A SCHULTZ
132 BROOK ST
MUSCATINE IA 52761

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

Appeal Number: 05A-UI-04474-DWT
OC: 03/27/05 R: 04
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

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's April 18, 2005 decision (reference 01) that concluded Carl A. Schultz (claimant) was qualified to receive unemployment insurance benefits, and the employer's account could be charged because the employer discharged the claimant for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 19, 2005. The claimant participated in the hearing. Eva Garcia, the community liaison officer, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge the claimant for reasons that constitute work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 25, 2004. The claimant agreed to work full time in the production department. The claimant knew the employer had a written attendance policy and the employer would discharge an employee if the employee accumulated 14 attendance points in a year.

Before the claimant was hired, he informed the employer he had some health problems that required him to be periodically hospitalized so his doctor's could run tests on him. When the claimant had a doctor's appointment or tests scheduled, he tried to get his absence excused. Many times the claimant's supervisor would not excuse the claimant because the employer was short handed and needed the claimant to work. When the claimant could not get an absence excused in advance, he then properly notified the employer when he was unable to work as scheduled but accumulated an attendance point.

As of September 22, 2004, the claimant had three attendance points and as of October 25, 2004; the claimant had accumulated six attendance points. As of December 10, the claimant had accumulated ten attendance points. Instead of giving the claimant warnings on the days he accumulated these points, the employer gave him three warnings on February 23, 2005. The three warnings corresponded to the September, October and December absences.

The claimant was hospitalized March 2 through March 26, 2005. The claimant requested and received a medical leave for the period of time he was hospitalized. The claimant had a doctor's follow-up appointment on March 28. March 28 was not covered under the claimant's medical leave of absence. The claimant properly notified the employer he was unable to work as scheduled for this doctor's appointment. When the claimant did not report to work as scheduled on March 28, he received his 14th attendance point. The employer discharged the claimant on March 30, 2005, for excessive absenteeism or for violating the employer's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer discharged the claimant for business reasons. Based on the employer's attendance policy, the claimant had excessive absenteeism and was not a dependable or reliable employee. The claimant's most recent absent was beyond his control. The claimant properly reported this absence and established a medical reason for the March 28 absence. The claimant did not intentionally or substantially violate the employer's interests when he was absent from work. The claimant did not commit a current act of work-connected misconduct. As of March 27, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 18, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of March 27, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/sc