

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

DANNY D MONTGOMERY  
202 MULBERRY ST  
WATERLOO IA 50703

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

Appeal Number: 05A-UI-08532-HT  
OC: 07/10/05 R: 03  
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, 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(1) – Quit  
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Tyson, filed an appeal from a decision dated August 10, 2005, reference 02. The decision allowed benefits to the claimant, Danny Montgomery. After due notice was issued, a hearing was held by telephone conference call on September 6, 2005. The claimant provided a telephone number of (319) 233-8456. That number was dialed at 8:05 a.m. and allowed to ring ten times. No one answered and the claimant did not participate. The employer participated by Human Resources Manager Dave Duncan.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Danny Montgomery was employed by Tyson from August 9, 2004 until February 11, 2005. He was a full-time rendering operator.

On February 11, 2005, the claimant filled out an exit interview which indicated he was quitting because he found other work at O'Neil Steel in Waterloo, Iowa. Continuing work may or may not have been available to him as he had accumulated 18 attendance points, and 14 is the level at which an employee may be discharged. However, the employer had not made any decision on the matter at the time the claimant submitted his resignation.

The records of Iowa Workforce Development do not show any wages reported for the claimant by any employer after his separation from Tyson.

Danny Montgomery has received unemployment benefits since filing a claim with an effective date of July 10, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The claimant's exit interview indicated a voluntary quit to accept other employment. However, there is no evidence of employment after Mr. Montgomery's employment with Tyson came to an end. The actual reason for his separation is not known and must therefore be considered to be without good cause attributable to the employer.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of August 10, 2005, reference 02, is reversed. Danny Montgomery is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$2,010.00.

bgh/kjw