

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

MARIA H GOMEZ
1321 E SECOND ST
MUSCATINE IA 52761

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

GUADALUPE MCCARNEY
INTERPRETER
4316 GRAND AVENUE #7
DES MOINES IA 50312

Appeal Number: 04A-UI-04092-S2T
OC: 03/14/04 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 – Overpayment

STATEMENT OF THE CASE:

Tyson Fresh Meats (employer) appealed a representative's April 1, 2004 decision (reference 01) that concluded Maria Gomez (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 7, 2004. The claimant participated personally through Guadalupe McCarney, Interpreter. The employer participated by Kristi Travis, Employment Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 28, 2001, as a full-time production labor. The claimant received a copy of the employer's Code of Conduct and Ethics and signed for its receipt on August 28, 2001. The Code was also posted on the wall in English and Spanish. A co-worker of the claimant was absent intermittently from work on a leave of absence due to a hostile work environment. Co-workers were spreading malicious gossip about her.

On or about March 10, 2004, the employer received information which indicated the claimant wrote a disparaging note about the co-worker. At first the claimant denied knowing the co-worker and/or writing the note. On March 10, 2004, the claimant admitted writing the note about the co-worker and distributing the note around the workplace to make the co-worker look bad. In the note the claimant called the co-worker a whore and made other malicious comments about the co-worker. The claimant wrote the note to help a friend. The employer terminated the claimant on March 11, 2004, for spreading malicious gossip about a co-worker in violation of the employer's Code of Conduct and Ethics.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was.

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The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer has established that the claimant did write and distribute malicious gossip about a co-worker with the intent to disparage the co-worker. In addition, the claimant was untruthful when asked about the incident. Employee dishonesty and the spreading of malicious gossip is contrary to the standard of behavior the employer would have a right to expect. The employer has established that the claimant was discharged for misconduct.

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The claimant has received benefits in the amount of \$1,620.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's April 1, 2004 decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,620.00.

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