

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

IRMA J ESTUPINIAN MARTINEZ
220 E 5TH ST APT 1
STORM LAKE IA 50588

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

Appeal Number: 04A-UI-04959-HT
OC: 04/04/04 R: 01
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 96.5-1 – Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Tyson, filed an appeal from a decision dated April 21, 2004, reference 01. The decision allowed benefits to the claimant, Irma Martinez. After due notice was issued, a hearing was held by telephone conference call on May 28, 2004. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Human Resources Manager Jim Petzoldt.

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: Irma Martinez was employed by Tyson from May 20, 2003 until April 6, 2004. She was a full-time production worker. At the time she was hired Ms. Martinez attended an orientation where she was informed of the company's policies and procedures, including the attendance policy. It was given in Spanish, and so were the written materials. One of the policies is that any employee who is no-call/no-show to work for three days will be considered a voluntary quit.

On Thursday, April 1, 2004, the claimant left after only two hours of work. She notified her supervisor she was leaving but did not receive permission to leave. Ms. Martinez was no-call/no-show to work on April 2, 5 and 6, 2004, and was considered a voluntary quit as a result.

Irma Martinez has received unemployment benefits since filing a claim with an effective date of April 4, 2004.

REASONING AND CONCLUSIONS OF LAW:

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

871 IAC 24.25(4) provides:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant failed to appear for work nor notify her employer of the reason for her absence for three consecutive work days. Under the provisions of the above Administrative Code section, as well as the employer's policies, this is a voluntary quit without good cause attributable to the employer. She is disqualified.

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 she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of April 21, 2004, reference 01, is reversed. Irma Martinez is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,768.00.

bgh/b