

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

MATTHEW J TRUNNELL  
1212 BERTCH AVE  
WATERLOO IA 50702

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

Appeal Number: 06A-UI-00993-DWT  
OC: 12/18/05 R: 03  
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, 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:

Tyson Fresh Meats, Inc. (employer) appealed a representative's January 17, 2006 decision (reference 01) that concluded Matthew J. Trunnell (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 13, 2006. The claimant participated in the hearing. Robin Mueller, an assistant human resource manager, 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 constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 14, 2001. The claimant worked as a full-time utility worker. The employer's policy informs employees about the employer's attendance policy. When an employee is late or does not work a scheduled shift, the employer assesses the employee an attendance point. In a rolling calendar year, if the employee accumulates 14 attendance points, the employer discharges the employee.

The employer talked to the claimant on September 29, 2005 about the number of attendance points he had accumulated. The employer warned the claimant he had to make sure he worked as scheduled and did not accumulate anymore attendance points.

On December 5, the claimant had car problems and was unable to get to work on time. After the claimant realized he had car problems, he contacted the employer to report he would be late for work. The claimant called the employer late. The employer assessed the claimant one attendance point for this incident. The employer also gave the claimant a one-day suspension on December 6, 2005. The employer told the claimant to report to work on December 7, but he was not to punch in until a manager talked to him.

The claimant went to work and waited two hours in the lunch room for a manager to talk to him. The claimant went to the human resource department, but people were busy and were not available to talk to the claimant. The claimant then went to an employee in the production training room and asked if he had a job or was discharged. The production room training employee checked on the status of the claimant's employment and told him he had pointed out and no longer had a job.

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. The claimant did not voluntarily quit his employment. Based on information he received from an employee who checked on his employment status, the claimant understood the employer discharged him because he violated the employer's attendance policy by having more than 14 attendance points.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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).

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 claimant knew or should have known his job was in jeopardy in late September when the employer talked to him about the number of attendance points he had accumulated. After this late-September discussion, the claimant did not accumulate any more attendance points until December 5. On this date he had unexpected car problems. Even though the claimant was late notifying the employer that he was unable to report to work on time, the claimant still contacted the employer. The employer established business reasons for discharging the claimant – violation of the employer's attendance policy. The point the claimant received on December 5 was beyond his control. The claimant did not intentionally or substantially fail to report to work on time this day. The claimant did not commit a current act of work-connected misconduct. As of December 18, 2005, the claimant is qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's January 17, 2006 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 December 18, 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/s