

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

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

Appeal Number: 06A-UI-01579-DWT
OC: 01/01/06 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, 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's January 31, 2006 decision (reference 03) that concluded Erica S. Boston (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 27, 2006. The claimant responded to the hearing notice, but was not available for the hearing. A message was left on the claimant's answering machine. The claimant did not contact the Appeals Section again to participate in the hearing. Robin Mueller, the assistant human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on May 31, 2005. The claimant worked as a full-time production worker. The employer's attendance policy informs employees the employer will discharge employees for attendance problems when they accumulate 14 attendance points in a year.

The employer gave the claimant a written warning on August 15 for accumulating 6 attendance points. On September 16, the claimant had 13 attendance points. The employer did not allow the claimant to punch in until the employer talked to her about her attendance. The employer warned the claimant she could be discharged if she received one more attendance point. On October 24, the claimant had 14 attendance points. After the employer talked to the claimant, she provided a doctor's excuse and the employer reduced the claimant's attendance points from 14 to 12. On November 16, the claimant again had 14 points. This time a human resource representative talked to the claimant. During this conversation, the claimant indicated she had not understood the employer's point system. The employer, for a second time, reduced the claimant's attendance points from 14 to 13.

On December 15, 2005, the claimant started her shift as scheduled. The claimant's son had been ill before the claimant reported to work. The claimant's childcare provider called the claimant at work. The claimant left the line to return her childcare provider's phone call. The claimant left work around 10:30 p.m. and went home to be with her child. The claimant's supervisor reported that the claimant left work without authorization on December 15.

On December 16, 2005, the claimant reported to work as scheduled. The employer talked to the claimant about why she left work early the night before. The claimant indicated she believed her supervisor knew she was leaving work. The claimant explained that while her child was not hospitalized, the child had been sick with a fever before December 15. The claimant did not indicate that she left work because of a medical emergency, but the claimant went home to be with her child.

The employer discharged the claimant on December 16 because leaving work early without authorization on December 15 resulted in an accumulation of 14 or more attendance points. If an employee has a sick child, they are to contact the human resource department. The human resource department may then make arrangements for the employer to leave work early without an adverse consequence to the employee.

The claimant established a claim for unemployment insurance benefits during the week of January 1, 2006. The claimant filed claims for the weeks ending January 7 through February 25, 2006. The claimant received her maximum weekly benefit amount of \$208.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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 claimant knew or should have known as of November 16, 2005, her job was in jeopardy if she failed to follow the proper procedures when she was unable to work as scheduled. In mid-November the employer gave the claimant another opportunity to continue her employment, but from then on the claimant had to follow the employer's attendance rules. On December 15, the evidence indicates the claimant left work without permission. Since the claimant did not participate in the hearing, it is not known why she did not work until the end of her shift or why she failed to contact the human resource department before she left work. Based on the evidence the employer provided, the employer established the claimant committed work-connected misconduct on December 15. Therefore, as of January 1, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending January 7 through February 25, 2006. The claimant has been overpaid \$1,664.00 in benefits the claimant received for these weeks.

DECISION:

The representative's January 31, 2006 decision (reference 03) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 1, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending January 7 through February 25, 2006. The claimant has been overpaid and must repay \$1,664.00 in benefits she received for these weeks.

dlw/tjc