

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

GLORIA M TREVINO
PO BOX 130
WEST LIBERTY IA 52776

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

Appeal Number: 06A-UI-00099-DWT
OC: 12/04/05 R: 04
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, 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

STATEMENT OF THE CASE:

Tyson Fresh Meats, inc. (employer) appealed a representative's December 27, 2005 decision (reference 01) that concluded Gloria M. Trevino (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 January 23, 2006. The claimant participated in the hearing. Chris Travis, the employment 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 employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 10, 1989. The claimant worked as a full-time laborer on the kill floor. R. C. was the claimant's supervisor. The employer's policy states an employee will be discharged if there is any falsification of a timecard.

The claimant notified R.C. that the employer did not pay her for five hours of work in October. R. C. attempted to get the claimant's retroactive pay through the proper procedure. R.C.'s attempts to get the claimant's five hours of pay were not successful. On November 25, 2005, the claimant had to leave work at 1:00 p.m. for a doctor's appointment and asked if the five hours the employer owed her could be obtained by showing she worked until 6:00 p.m. that day. R. C. indicated this would be all right. The claimant's timecard on November 25 reflected that the claimant worked until 6:00 p.m. even though she left work at 1:00 p.m. The claimant did not realize this decision could result in her discharge. The claimant had done this before with authorization and there had not been any problems.

The employer learned the claimant left at 1:00 p.m. instead of 6:00 p.m. as her timecard indicated on November 25, 2005. Even though the claimant's supervisor gave the claimant permission to do this and the claimant was a long-time employee and her job was not in jeopardy prior to November 25, the employer followed its policy and discharged both the claimant and her supervisor on November 30. The employer acknowledged the claimant made a mistake, but had to follow the written policy.

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. 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).

The employer established business reasons for discharging the claimant. Even though the claimant did not accurately reflect the time she worked on November 25, she received permission from her supervisor on how to record her time on November 25, the employer owed her five hours of pay, the claimant's job was not in jeopardy, and the employer had not disciplined the claimant in the past for doing the same thing. The evidence does not establish

that the claimant substantially disregarded the employer's interests on November 25. The employer acknowledged the claimant made a mistake but the employer had to follow its written policy. Under the facts of this case, the claimant did not commit work-connected misconduct. As of December 4, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's December 27, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of December 4, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjw