

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**GATLUAK F TIP**  
Claimant

**APPEAL NO. 08A-UI-07403-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 07/06/08 R: 01  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Tyson Fresh Meats, Inc. (Tyson) filed an appeal from a representative's decision dated August 4, 2008, reference 01, which held that no disqualification would be imposed regarding Gatluak Tip's separation from employment. After due notice was issued, a hearing was held by telephone on September 2, 2008. Mr. Tip participated personally. The employer participated by Will Sager, Human Resources Manager.

**ISSUE:**

At issue in this matter is whether Mr. Tip was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Tip was employed by Tyson from February 6 until June 6, 2008 as a full-time production worker. He was discharged because he stepped on meat on June 5.

Mr. Tip was receiving pork bellies on the line and placing them in combos on June 5. Some of the bellies fell on the floor and he inadvertently stepped on one. He had not engaged in similar conduct in the past and had not previously been warned about any conduct. As a result of his actions on June 5, Mr. Tip was discharged on June 6, 2008.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer alleged that Mr. Tip deliberately stepped on meat on June 5, an allegation that was denied by him. The employer did not present testimony from any individual who witnessed the conduct. Although the employer's hearsay testimony on the issue

is admissible, the administrative law judge is not inclined to give it more weight than Mr. Tip's sworn and credible statement that he inadvertently stepped on the meat.

The employer failed to establish that Mr. Tip deliberately and intentionally acted in a manner he knew to be contrary to the employer's interests or standards. The most the employer's evidence established was an isolated instance of negligence, which is not misconduct within the meaning of the law. See 871 IAC 24.32(1). While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

**DECISION:**

The representative's decision dated August 4, 2008, reference 01, is hereby affirmed. Mr. Tip was discharged, but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw