

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MANUEL SALAZAR
Claimant

APPEAL NO: 10A-UI-10888-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 06/13/10
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's July 22, 2010 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non disqualifying reasons. A telephone hearing was held on September 22, 2010. The claimant participated in the hearing. Kris Travis, the employment manager, appeared on the employer's behalf. Olga Esparza interpreted the hearing. 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 October 31, 1990. The claimant worked full time in the kill-floor department as a production employee. Prior to June 9, 2010, the claimant's job was not in jeopardy, but he had work restrictions that the employer accommodated.

On June 9, 2010, after the claimant went to a cooler in Bay 1 to check on some hogs, an employee reported the claimant had urinated on the cooler floor. The employee did not see anyone urinate, but observed the claimant pulling up or zipping up his pants. There was liquid on the floor where the claimant appeared to have come from.

When the employer talked to the claimant, a co-worker, M.A. interpreted for the claimant. When the supervisor first asked the claimant if he had urinated in the cooler, the claimant told him no, he had just been adjusting his frock. The claimant explained why he had been in the cooler. After the supervisor told the claimant to tell him the truth, M.A. told the claimant to admit he had urinated so it would not be so bad for him. Even though the claimant had not urinated, he told the supervisor he had done this. The employer asked the claimant to sign papers on June 9. The claimant did not know what he signed and no one translated the information on the papers. The supervisor suspended the claimant on June 9 and told the claimant he would talk to Duncan the next day.

On June 10, 2010, the employer discharged the claimant after concluding he urinated on the cooler floor the day before. The claimant knew and understood it was unsanitary and prohibited by the employer to urinate anywhere on the production floor.

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 section 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).

Based on the employer's ability to talk to witnesses on June 9, and the claimant's alleged admission that he urinated on in the cooler, the employer established business reasons for discharging him. The evidence presented at the hearing, however, indicates the employee who interpreted for the claimant, M.A., told the claimant to admit he urinated even though he told the employer and M.A. he had not. Also, M.A. reported that when she questioned the claimant about urinating; he admitted he had. Without M.A. present to testify, the claimant's testimony has more weight than the employer's reliance on unsupported hearsay information. It is illogical for the claimant; a long-time employee to urinate when he knew this was unsanitary and violated the employer's standard of conduct. Based on the evidence presented during the hearing, the claimant did not commit work-connected misconduct. Therefore, as of June 13, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's July 22, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for compelling reasons, but the claimant did not commit work-connected misconduct. As of June 13, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs