

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIO ALCOTA
Claimant

APPEAL NO: 09R-UI-03333-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 09/21/08
Claimant: Appellant (1)

Section 96.5-2-a - Discharge for Misconduct
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Julio Alcota appealed an unemployment insurance decision dated October 10, 2008, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on January 27, 2009. Alcota participated in the hearing with the assistance of interpreter Ike Rocha. Exhibit A-1 was admitted into evidence at the hearing.

ISSUE:

Did Alcota file a timely appeal?
Was Alcota discharged for work-connected misconduct?

FINDINGS OF FACT:

Alcota worked full time as production worker from February 5, 2001 to July 15, 2008. He got into an argument with an African-American coworker, David Lewis, on July 14. During the argument, Lewis said "Fuck you" and then "Fuck your mother, your sister, your brother, and your whole family." Alcota replied "Fuck you nigger." Lewis responded "Fuck you and go back to Mexico." Alcota then told the coworker "You're the one who needs to go back to the jungle." At some point, the coworker slapped Alcota's face. Alcota then reported what had happened to a supervisor. Both Alcota and Lewis wrote up a statement about what happened. Both were discharged on July 15, 2008, based on what they said and did the day before. Alcota had never had any previous problems during his employment and was considered a good worker.

Alcota filed his appeal of the decision mailed to him on October 10, 2008, on October 15, 2008, at his local Workforce Development Center. The appeal was not initially received by the Appeal Bureau, so it was refaxed by the Workforce Development Center on October 24, 2008.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

Iowa Code section 96.6-2 states that a decision is final if it has not been appealed within ten calendar days after notification was mailed to the claimant's last-known address. Alcota appealed the decision within the ten days provided for by law.

The next issue in this case is whether Alcota was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

Even though Lewis clearly provoked Alcota and started the name-calling, Alcota's offensive language toward Lewis was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of civil behavior the employer had the right to expect of the claimant. He should have immediately reported Lewis's insults to a supervisor. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated October 10, 2008, reference 01, is affirmed. Alcota is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs