

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH S WILSON
Claimant

APPEAL NO. 06A-UI-11631-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 10/29/06 R: 02
Claimant: Respondent (2)**

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 November 20, 2006 decision (reference 01) that concluded Joseph S. Wilson (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 December 19 2006. The claimant participated in the hearing. Alberto Olguin, the human resource manager, and Terry Carmichael, 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.

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 laborer. Before the claimant could begin working, he had to pass a physical. During his physical, the claimant informed the employer's nurse he had no prior back or hand problems. Before working for the employer, the claimant experienced pain in one of his hands. The claimant saw a doctor about the pain in his hand. The claimant did not report this fact to the employer, because he was not experiencing any pain when he took the physical. Also, the claimant wanted the job and did not want to lose the opportunity for this job if he reported he

had problems with a hand. The claimant assumed the physical exam would reveal any problems he had with his hand(s). If the employer had known the claimant had problems with his hands, the employer would not have hired the claimant.

The claimant did not have any problems with his hands until October 2006. The claimant went to the employer's nurse because he was experiencing pain in both hands. The claimant then told the nurse about the problems he had with one hand before he began working for the employer.

After the employer learned the claimant had not provided truthful information about his medical condition and he had experienced pain in one hand prior to May 25, 2005, the employer discharged the claimant. The employer discharged the claimant on October 25, 2006, because he falsified information about his prior medical history during his May 25 2005 physical exam.

The claimant established a claim for unemployment insurance benefits during the week of October 29, 2006. The claimant filed a claim for the week ending November 4, 2006. The claimant received \$167.00 in benefits for this week.

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 § 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 intentionally withheld information about medical problems he previously experienced because he wanted to work for the employer. Even though the claimant did not have any pain on May 25, 2005, and the physical exam did not reveal any medical problems, the employer had a legitimate reason for obtaining this personal medical information so the employer would not assign the claimant to a job that might aggravate a medical problem or injure the claimant. Even though the claimant wanted the job, he disregarded the employer's interests when he intentionally failed to inform the employer about his previous hand problems. This constitutes work-connected misconduct. Therefore, as of October 29, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he 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 week ending November 4, 2006. The claimant has been overpaid \$167.00 in benefits he received for this week.

DECISION:

The representative's November 20, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 29, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the week ending November 4, 2006. The claimant has been overpaid and must repay a total of \$167.00 in benefits he received for this week.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw