

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAMMY L WOLF**  
Claimant

**APPEAL NO. 11A-UI-12434-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 08/28/11**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 21, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on October 13, 2011. Claimant participated. Employer participated through Employment Manager Kris Travis.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production worker and was separated from employment on August 24, 2011. Her last day of work was Friday, August 19, 2011. On that date, Supervisor Jesus Garcia smelled alcohol on her breath and referred her to human resources and the company nurse. She volunteered to take the breathalyzer in the presence of the nurse at 7:20 a.m.; but, by the time the Human Resources Manager Dave Duncan reported at 7:40 a.m. to sign the paperwork for the test, the claimant had left the work premises. She stated that she left because the nurse refused to allow her to go to the bathroom in the enclosed bathroom, but she did not ask to be escorted to the bathroom stalls in the locker room, did not tell anyone she was leaving or why, did not wait ten minutes for Duncan, did not simply go to the bathroom and return, and did not go above the nurse's head for assistance. She was given information about the alcohol testing policy in orientation and would have been given a hard copy had she stayed for the breathalyzer. The employer's policy provides for termination for failure to take a breathalyzer and for leaving without permission. She knew that leaving without notice or permission may result in discipline or termination.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

Claimant had a number of other reasonable options to pursue about her need to go to the bathroom but did not pursue those options and left without communication with the employer until the following Monday. Her failure to remain for the breathalyzer test upon reasonable suspicion and walking off the job without notice or permission in violation of company policy was misconduct sufficient to warrant a denial of benefits.

**DECISION:**

The September 21, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw