IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TERRENCE T HARRIS
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO: 12A-UI-04528-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/11/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Terrence T. Harris (claimant) appealed a representative's April 13, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Tyson Fresh Meats, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on May 10, 2012. The claimant received the hearing notice and responded by calling the Appeals Section on May 4, 2012. He indicated that he would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, the claimant did not participate in the hearing. Chris Rossiter appeared on the employer's behalf and presented testimony from one other witness, Don Donalson. One other witness, Barb Larson, was available on behalf of the employer but did not testify. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on October 16, 2007. He worked full-time as a first shift maintenance mechanic at the employer's Columbus Junction, Iowa, pork processing facility. His last day of work was prior to February 20, 2012. The employer suspended him on that date and discharged him on February 23, 2012. The stated reason for the discharge was exhibiting threatening behavior and acting violently on the premises on February 20.

The claimant had called in an absence due to claimed illness for his shift on February 20. At about 2:15 p.m., approximately the time he would have been getting off of his shift had he

worked, he came into the facility. He went to the office of the plant maintenance engineer, indicating he wished to speak to him. The plant maintenance engineer was not there, so someone sent the claimant to speak to Donalson, the maintenance superintendent. Donalson was working on a problem in the locker room with another person, but when the claimant came to them and appeared to be somewhat incoherent and smelling of alcohol, Donalson led the claimant to the cafeteria. The claimant then indicated he wanted to speak to someone else, but when he was asked what it was he wanted to talk to that person about, he indicated he did not know why. Donalson left briefly to find someone else to assist him, and when he returned, the claimant was in the lunch line. When he again approached the claimant, the claimant began rambling and became agitated and loud. He then held out his hands in a choking motion about three or four inches from Donalson's neck, saying, "If I had your neck in my hands, oh."

Donalson and the other person then escorted the claimant from the building and informed him he was being suspended because of his violent and threatening behavior. The claimant came back in for a meeting on February 24, and was then informed he was being discharged for his violent and threatening behavior.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's behavior on the employer's premises on February 20, even though he was off-duty, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's April 13, 2012 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 20, 2012. This disqualification continues until the claimant 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/kjw