

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TUMWIZERE WILIAMU
Claimant

APPEAL NO: 11A-EUCU-00605-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 04/25/10
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's July 12, 2011 determination (reference 05) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Nancy Mwiroti interpreted the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in September 2009. He worked full time. In February 2010, the claimant injured his back at work. He had back surgery in February 2010 which was covered under workers compensation.

The claimant was not released to return to work until February 1, 2011. In mid-November 2010, the claimant asked the employer about his employment status. The employer then informed the claimant that as of November 2, 2010, he was no longer considered an employee because he had been off work more than six months and still had not been released to return to work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The facts do not establish that the claimant quit. Instead, the employer discharged him because he was unable to work for more than six months.

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).

While the employer had business reasons for ending the claimant's employment when he was unable to work for more than six months, the claimant did not commit work-connected misconduct. Therefore, as of October 31, 2010, the claimant is qualified to receive benefits based on the reasons for his employment separation. The claimant was not, however, eligible to receive benefits until his doctor released him to work on February 1, 2011. See representative's determination (reference 03).

DECISION:

The representative's July 12, 2011 determination (reference 05) is reversed. The claimant did not voluntarily quit his employment. Instead, he was discharged because after he had back surgery, he was unable to work for more than six months. The claimant did not commit work-connected misconduct. Therefore, as of October 30, 2010, the claimant is qualified to receive benefits based on the reasons for his employment separation. Based on a determination (reference 03) the claimant was not eligible to receive benefits until the week of January 30, 2011, or after his physician released him to work. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css