

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIDY J STRUB

Claimant

APPEAL NO. 10A-UI-12882-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 08-15-10

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 9, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 2, 2010. The claimant did participate. The employer did participate through Will Sager, Complex Human Resources Manager.

ISSUE:

Was the claimant discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a production worker, full-time, beginning May 13, 2008, through August 16, 2010, when she was discharged. On August 10 the claimant was performing the job she had been trained to do, "pulling ribs." The employer does not allow any employee to perform a job until they have completed a job safety analysis for that particular position to insure that they understand how to safely perform all of the required duties. On August 10 the claimant left her job on the line, walked over to another employee who was doing the "pulling loins" job, and worked at that job for a period of time. She had not completed a job safety analysis for the pulling loins job and was not asked by anyone, supervisor or co-worker, to perform the pulling loins job. The claimant's performance of a job she was not trained to perform was a violation of the employer's safety rules and regulations. The claimant had been given a prior warning for a safety violation for horseplay when she and another employee played tug of war with a rib knife.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant knew or should have known that she was not to do any other person's job other than her own. She had not been trained on how to safely do the pulling loins job and was not asked to perform the tasks by anyone. She had been warned about safety issues prior to her discharge. Her failure to follow the safety rules after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Benefits are denied.

DECISION:

The September 9, 2010 (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw