

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE ORTEGA**  
Claimant

**APPEAL NO. 07A-UI-10395-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 09-30-07 R: 03**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
Section 96.6-2 – Burden of Proof

**STATEMENT OF THE CASE:**

Jose Ortega filed a timely appeal from an unemployment insurance decision dated October 31, 2007, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held on November 29, 2007 with Mr. Ortega participating. Oliver Koch served as the interpreter. When contacted at the time of the hearing, the employer declined to participate.

**ISSUE:**

Was the claimant discharged for misconduct in connection with his employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Jose Ortega was a production worker for Tyson Fresh Meats, Inc. from January 4, 2005 until he was discharged October 3, 2007. On October 2, 2007, a co-worker bumped him inadvertently, causing hot liquid to be spilled on his hand. Mr. Ortega went to the infirmary for treatment. He was sent home after receiving treatment with instructions to return on the following day. He was discharged upon his return.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does not.

Iowa Code section 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.

The employer has the burden of proof. See Iowa Code section 96.6-2. As indicated above, the employer declined to offer any evidence for this record. The claimant's testimony establishes that the incident leading to discharge was an accidental bumping, not a confrontation in which Mr. Ortega was a willing participant. Based upon the evidence in this record, no disqualification may be imposed.

**DECISION:**

The unemployment insurance decision dated October 31, 2007, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs