

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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APT 101
154 ARGYLE ST
WATERLOO IA 50703-3744

TYSON FRESH MEATS INC
C/O TALX – UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-03113-SWT
OC: 02/19/06 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 10, 2006, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on April 10, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Jim Hook was listed as the employer's representative but was not available to take the call at the time of the hearing.

FINDINGS OF FACT:

The claimant worked for the employer as a production worker from January 18, 2005, to February 21, 2006. She began working full time but starting in October 2005, she was permitted to work part time for the employer. She performed the same job, flushing heads, before and after the change in her status to part time. She understood that her base pay was

\$9.00 per hour, but she would be entitled to pay raises based on the period of time she worked on a job. As of January 2006, the claimant's rate of pay was \$11.40 per hour. There were times in January 2006 when the claimant noticed that she was being paid \$9.00 dollars per hour, but when she brought it to the employer's attention, the paycheck was always adjusted.

On February 14, 2006, the claimant was experiencing back problems. The employer sent the claimant to the company doctor. The company doctor determined the claimant's back problems were not work related, but placed the claimant on light-duty work until she could see her personal physician on February 22.

The light-duty work assigned to the claimant involved sitting on a chair in the hallway of the rendering area. No job duties were assigned to the claimant for this light-duty job. The claimant sat in the hallway for two days. Even though the claimant was wearing warm clothing and a coat, she was uncomfortably cold. She asked if she could periodically leave the area to warm up but was told that she had to stay seated in the area and could only leave at break time.

September 16, 2006, was payday. When the claimant received her check for the previous week, she noticed that she was again paid \$9.00 per hour. She complained to the personnel department about her check and indicated that she would not continue to work until she was paid properly. The employer suspended the claimant for alleged insubordination. She was instructed to return to work on February 21.

The claimant returned to work on February 21, which would have been her last day on light-duty work. The claimant requested that she received a different light-duty job, but her supervisors informed her that was the only job she could do. When she declined to go sit in the rendering hallway, the employer discharged her for insubordination.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. Based on the claimant's testimony, she did not commit any willful and substantial misconduct when she declined to work until her paycheck was fixed or declined to take a job that involved sitting in a cold hallway without any job tasks to do.

DECISION:

The unemployment insurance decision dated March 10, 2006, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/tjc