

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAVDIM PECANI

Claimant

APPEAL NO. 10A-UI-02096-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

Original Claim: 01/10/10

Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lavdim Pecani filed an appeal from a representative's decision dated February 11, 2010, reference 01, which denied benefits based on his separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on April 29, 2010. Mr. Pecani participated personally. Amila Mayhew participated as the interpreter. The employer responded to the notice of hearing, but the designated witness was not available at the scheduled time of the hearing.

ISSUE:

At issue in this matter is whether Mr. Pecani was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Pecani worked for Tyson in California for nine years before transferring to Iowa in approximately December of 2008. He worked full-time in production. He was discharged on January 8, 2010 based on an allegation that he struck a piece of meat. His only prior disciplinary action was two months after he started when he was written up for not cleaning to the employer's standards.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). It was incumbent upon the employer to provide specific details of the reason for discharge, as mere allegations of misconduct are not sufficient to result in disqualification. 871 IAC 24.32(4). Tyson did not participate in the hearing to provide details concerning the conduct that prompted Mr. Pecani's discharge. Therefore, the administrative law judge cannot determine whether the conduct amounted to misconduct within the meaning of the law.

For the reasons cited herein, it is concluded that the employer has failed to satisfy its burden of proving that Mr. Pecani should be disqualified from receiving benefits. As such, no disqualification is imposed.

DECISION:

The representative's decision dated February 11, 2010, reference 01, is hereby reversed. Mr. Pecani was discharged by Tyson, but misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw