

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NDUWIMANA ANACLET
Claimant

APPEAL NO: 14R-UI-10461-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 03/09/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDUAL STATEMENT OF THE CASE:

The claimant appealed a representative's July 29, 2014 determination (reference 06) that disqualified him from receiving benefits and held the employer's account exempt from charge because his employment separation was for disqualifying reasons.

FIRST HEARING: A telephone hearing was initially held on August 21, 2014. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate at the hearing. An interpreter provided services at this hearing. On August 29, an administrative law judge issued a decision that held the claimant qualified to receive benefits. See decision for appeal 14A-UI-07851.

The employer appealed the August 29 decision to the Employment Appeal Board. The Employment Appeal Board remanded this matter to the Appeals Bureau for another hearing.

SECOND HEARING: The clamant participated at an October 29 hearing. The employer responded to the hearing notice and provided a phone number to contact the employer's witness. The employer's witness was called, but was not available to participate at the hearing. A message was left for the employer's witness to contact the Appeals Bureau. As of the date of this decision, the employer has not contacted the Appeals Bureau concerning this appeal. Mulonda Mwangilwa participated at the October 29 hearing to interpret the hearing.

Based on the evidence presented on August 21, the claimant's arguments, and the law, the administrative law judge concludes that as of July 6, 2014, the claimant is qualified to receive benefits.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in April 2014. He worked full time as a skinner at the employer's Perry, Iowa, pork processing facility. The claimant's last day of work was

June 13, 2014. The employer discharged him on that date. The claimant understood the employer discharged him because he had not satisfactorily performed his duties after he was injured. On June 6 the claimant received work restrictions for problems he experienced with his hands and fingers. The employer placed him on light-duty work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant because he could not perform his work duties. A discharge because of a claimant's inability to perform work to the employer's satisfaction does not constitute misconduct. Based upon the evidence provided at the August 21 hearing, the claimant did not commit work-connected misconduct and he is qualified to receive benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's July 29, 2014 (reference 06) decision is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of July 6, 2014, the claimant is qualified to receive benefits. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css