

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

RODOLFO GARCIA-HERRERA  
4021 HOMER ST  
WATERLOO IA 50703

TYSON FRESH MEATS INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-01111-AT  
OC: 01-04-04 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Rodolfo Garcia-Herrera filed a timely appeal from an unemployment insurance decision dated January 30, 2004, reference 01, which disqualified him for benefits. After due notice was issued, a telephone hearing was held February 26, 2004 with Mr. Garcia-Herrera participating. Personnel Manager Dave Duncan participated for the employer, Tyson Fresh Meats, Inc. Guadalupe McCarney served as interpreter.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Rodolfo Garcia-Herrera was employed as a production worker by Tyson Fresh Meats, Inc. from October 16, 1995 until he was discharged January 5, 2004. The incident that led to his discharge occurred on January 3, 2004. Mr. Garcia-Herrera's supervisor assigned him a task that would require him to wear safety glasses or a face shield, items which are made of the same substance. Mr. Garcia-Herrera had experienced pain in his eyes when wearing the safety glasses in the past, and he had told his supervisor of this. He refused the assigned task solely because of the pain caused by the glasses. The supervisor called Personnel Manager Dave Duncan and the general supervisor to try to resolve the impasse because Mr. Garcia-Herrera was a long-time employee with a good work record. Mr. Garcia-Herrera declined Mr. Duncan's suggestion to wear the facemask without explaining the reason. Mr. Garcia-Herrera believed that the supervisor would have told Mr. Duncan of the problem already. Mr. Garcia-Herrera was suspended on January 3, 2004 and discharged on January 5, 2004.

On February 9, 2004 Mr. Garcia-Herrera spoke to a physician at the People's Clinic. He learned from the physician that the pain he experienced in his eyes when wearing the safety glasses was related to his Diabetes.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Garcia-Herrera was discharged because of willful misconduct. 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

As a general rule, continued refusal to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). Nevertheless, failure to perform a specific task does not constitute misconduct if the failure is in good faith or for good cause. See Woods v. IDJS, 327 N.W.2d 768 (Iowa App. 1982). The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. See Endicott v. IDJS, 367 N.W.2d 300 (Iowa App. 1985).

On its face, the employer's instructions were eminently reasonable. The task was part of the claimant's duties as a production worker on the kill floor. Nevertheless, the claimant also had a valid reason for refusing the assignment. Although he did not know the medical reason for the pain at the time, he knew that wearing the glasses caused pain in his eyes and he knew that the face shield was made of the same substance as the safety glasses. Although he only later realized that the pain was related to his Diabetes, he was aware that the glasses were painful. Under these circumstances, it was not disqualifying misconduct for the claimant to refuse the assignment. Benefits are allowed.

#### DECISION:

The unemployment insurance decision dated January 30, 2004, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

b/kjf