

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

KO K CHO  
1009 DORCAS ST  
OMAHA NE 68108

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

Appeal Number: 05A-UI-06992-SWT  
OC: 06/05/05 R: 12  
Claimant: Respondent (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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 27, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 29, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Rita Huske participated in the hearing on behalf of the employer with witnesses, Jack Liford and William Akol.

FINDINGS OF FACT:

The claimant worked full time for the employer as a pump operator from October 25, 2001, to June 9, 2005. He was in training to be a lead person. The claimant was informed and understood that under the employer's work rules, employees were required to lock out a machine before working on it and applying physical force to another employee was prohibited.

On June 8, 2005, the claimant and his supervisor became aware that a bandsaw needed a new blade. The claimant got the bandsaw blade and the supervisor locked out the machine with the supervisor's lock. The supervisor allowed the claimant to change the bandsaw blade even though the only individual who was authorized under the safety rules to work on the machine was the person who locked the machine.

Another supervisor, William Akol, went over to where the claimant was changing the saw blade and warned the claimant that he was not authorized to change the blade. The claimant told Akol that he needed to learn how to do these things if he was going to be a lead person. Akol instructed the claimant to go to the foreman's office. The claimant said "let's go" to Akol and pushed him on the shoulder to get him to come along. The claimant considered Akol his friend and had joked and kidded around with him in the past, including punching each other playfully. This is what the claimant intended when he pushed the supervisor's shoulder. He did not do it aggressively to hurt Akol.

Akol considered the conduct insubordinate and reported it to the foreman. On June 9, 2005, the employer discharged the claimant for violating a safety rule and being insubordinate toward his supervisor on June 8. The claimant had never been counseled about similar behavior before.

#### 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.

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).

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. No willful or substantial misconduct has been proven in this case. The supervisor allowed the claimant to change the saw blade and the claimant's pushing Akol's shoulder was intended as a good-natured prodding.

#### DECISION:

The unemployment insurance decision dated June 27, 2005, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kjw