

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIKE R BUCHHOLZ
Claimant

APPEAL NO. 07A-UI-07885-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 07/15/07 R: 03
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Mike R. Buchholz (claimant) appealed a representative's August 13, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 4, 2007. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 1989. Prior to his employment separation, the claimant worked full time as a general foreman. For the last four to five months, Tom Hart supervised the claimant. After Hart became the claimant's supervisor, there were a number of times Hart swore at the claimant. The claimant complained about Hart's offensive language and disrespect shown toward the claimant.

July 18 was not a good day at work. There were several issues or problems that had to be corrected. The claimant followed up with his supervisors to make sure the problems were corrected. Finally, around 12:45 p.m. the claimant tried to get a break and eat his lunch. As soon as the claimant sat down, Hart ordered the claimant to go the floor immediately. After the claimant arrived, Hart immediately started yelling and swearing at the claimant for not following

up with his supervisors. After the claimant explained how he had followed up, Hart told the claimant he was going to receive a disciplinary warning anyway because he had not given any of his supervisors any disciplinary warnings. The claimant became extremely frustrated with Hart and told him he had to leave but was not quitting. The claimant went to the human resource office to talk to a human resource representative about the way Hart had just treated him. The claimant did not find anyone in this department. The claimant went home about an hour early on July 18, 2007.

The claimant reported to work as scheduled on July 19. He explained to the Mike Grothe, the plant manager, what had happened the day before. The employer then told the claimant he was suspended and could not return to work while the employer investigated. On July 25, the employer informed the claimant he was discharged because he left work after he learned he was going to receive a disciplinary warning.

The claimant had not received any disciplinary warning prior to July 18. The claimant had not previously left work early. Prior to July 18, the claimant and Hart had confrontations, but not to the same extent as what occurred on July 18.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. Even though the claimant left work an hour early on July 18, he did not intend to quit his employment. The fact he reported to work the next day as scheduled supports this conclusion. The employer suspended the claimant on July 19 and then discharged him on July 25.

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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant is a long-time employee and had not previously left work early. The claimant left work early on July 18 when he could not find anyone in the human resource department to talk to after his immediate supervisor again swore at him. The employer may have had business reasons for discharging the claimant. Based on the evidence presented during the hearing, the facts do not establish that the claimant intentionally disregarded the employer's interests on July 18. Therefore, the employer did not establish that the claimant committed work-connected

misconduct. As of July 15, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 13, 2007 decision (reference 01) is reversed. The claimant did not voluntarily quit his employment. Instead, the employer discharged him for reasons that do not constitute work-connected misconduct. As of July 15, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw