IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

JOHN L SEPTER
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO. 18A-UI-03131-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/28/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

John Septer (claimant) appealed a representative's March 1, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Tyson Fresh Meats (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 4, 2018. The claimant participated personally. The employer participated by Kris Rossiter, Employment Manager, and Jeff Thompson, Area Procurement Supervisor. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 7, 2007, as a full-time livestock handler four. The claimant signed for the employer's Team Member Orientation/Training sheet on August 10, 2007. On July 14, 2014, May 2, November 9, 2015, June 1, August 27, 2016, and April 4, 2017, the claimant signed a Pork Animal Handling & Stunning Training Sheet. Sometimes the claimant took a test before signing the sheet. Other times the claimant just signed the sheet. The sheets state, "I understand if these procedures are not followed, I will be subject to discipline, up to and including discharge". Signs were posted in the claimant's work area about proper handling of livestock. The employer knew that if the rules were not followed they could be subject to sanctions from the United States Department of Agriculture. Those sanctions could result in plant shutdown or suspension of their slaughter permit.

The employer's rules prevented employees from dragging pigs, using electrical hotshots, or other egregious acts. Livestock with a broken leg should be euthanized immediately. Livestock should not be allowed to walk over a downed pig. Two employees were required to euthanize a pig.

The employer told supervisors to issue employees radios for use during their shifts. The claimant's supervisor never issued him a radio and he was unaware of this policy. On January 29, 2018, a driver who was an employee of Brenneman came to the employer's facility with his trailer. He was in a hurry because this was his last load of the night. There was a hog with a broken leg on the driver's trailer. The claimant talked to the driver about the pig but the driver would not allow the claimant on his trailer. The driver would not stop to allow the claimant to get another employee to euthanize the pig. The claimant did not have a radio to call his supervisor or ask for help.

The driver used an electrical hotshot on the pigs. He drug the hog with the broken leg off the trailer. The claimant move to the driver and told him to stop. After the hog with the broken leg was off the trailer, other pigs walked over her. The claimant tried to block their path until he could shut the gate and separate the pigs from the downed hog. Later, he returned with a co-worker and euthanized the downed pig.

The employer suspended the claimant on January 29, 2018. The employer viewed the video of the situation on January 29, 2018. The video contained no audio. The employer talked to the driver from Brenneman. The driver told the employer that the claimant did not talk to him. The claimant denied the driver's claims. The employer believed the claimant should have locked the gate and called for help on his radio. The claimant did not know he had the authority to lock the gate and did not have a radio. On January 31, 2018, the employer terminated the claimant for violation of company rules regarding treatment of animals.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The claimant was handed a difficult situation on January 29, 2018. The employer gave him no tools to prepare him for or to remedy such a situation. Then it terminated him when the claimant could not make a non-employee follow rules. The employer could have viewed the incident as a training opportunity for the claimant and others. Instead, it terminated the claimant with no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's March 1, 2018, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs