

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAFAEL ALVAREZ
Claimant

APPEAL NO. 11A-UI-02496-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 01/02/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 23, 2011, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on March 28, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Susan Pfeifer participated in the hearing on behalf of the employer with a witness, Steve White.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a worker in the receiving area from May 18, 2000, to January 5, 2011. He received a written warning on May 5, 2010, for failing to chock the wheels on a trailer he was responsible for unloading, which violated safety rules that the claimant was trained on. He received a warning and suspension on November 11, 2010, for failing to unhook the tractor from the trailer before unloading the trailer, which violated safety rules that the claimant was trained on.

On January 5, 2011, the safety director witnessed the claimant driving a standup forklift. He saw the claimant dismount the forklift before it had come to a stop. The claimant had been trained that he was not to get off a forklift until it came to a stop to avoid injuring himself or others. As a result of these repeated safety violations, the employer discharged the claimant on January 6, 2011.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or

omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant, especially since he had previous warnings for safety violations. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated February 23, 2011, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw