

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLY K KABAMBA
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 21A-UI-17903-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/13/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 10, 2021, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified about the hearing. A hearing was scheduled for October 5, 2021, pursuant to due notice. Claimant Kelly K. Kabamba participated through a French interpreter with CTS Language Link. Employer Tyson Fresh Meats, Inc. registered a witness to participate in the hearing, but the witness was unavailable when contacted by the administrative law judge and did not participate.

ISSUE:

Did claimant voluntarily leave the employment without good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's evidence: Claimant was employed full time as a mill driver from March 7, 2017, until May 11, 2021, when he was discharged.

On May 11, 2021, the general supervisor asked claimant to go to a different station to work because an employee was out on vacation. While claimant worked, a line supervisor approached and told claimant to return to his station. Claimant explained that as soon as he finished his current task assigned to him by the general supervisor, he would return to his duties. The line supervisor asked for claimant's ID badge and sent him home for the day and told him to await a call. Claimant did not receive a call, and sometime later received a letter in the mail from employer regarding the end of his employment and his 401K plan.

Claimant received no disciplinary action during his employment and was not aware his job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

As an initial matter, claimant did not quit his employment, but was discharged. For the reasons that follow, the administrative law judge concludes claimant she was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

No evidence was presented that claimant intended to separate from his employment. As such, the separation was a discharge, the burden of proof falls to the employer, and the issue of misconduct is examined.

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).

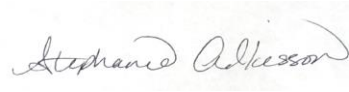
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dept of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dept of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dept of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

No evidence was presented that claimant received any warnings about his conduct or that he knew his job was in jeopardy. There is no evidence showing an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Employer has not met its burden of proving disqualifying job-related misconduct. Benefits are allowed provided claimant is otherwise eligible.

DECISION:

The August 10, 2021, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.



Stephanie Adkisson
Administrative Law Judge
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October 12, 2021
Decision Dated and Mailed

sa/mh