

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

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

Appeal Number: 04A-UI-05727-SWT
OC 05/02/04 R 01
Claimant: Appellant (1)

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, 4th 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 claimant appealed an unemployment insurance decision dated May 18, 2003, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on June 16, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Guadalupe McCarney. Jim Petzoldt participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker on the kill floor from July 1, 2003 to April 29, 2004. The claimant was informed and understood that under the employer's work rules, he was subject to discharge for repeated safety violations. On March 16, 2004, the claimant was warned after he operated a stationary knife without the required safety equipment. He received a written warning and suspension on March 16, 2004,

for hitting his knife on his shield in the presence of another employee, which was considered a safety violation.

On April 27, 2004, the claimant cut his finger due to carelessness in handling his knife. Later that day, a supervisor observed the claimant kicking a piece of a hog's tongue toward another employee. The other employee had thrown it at the claimant first. This was considered a safety violation. The claimant was suspended for this conduct and was discharged for repeated safety violations on April 29, 2004.

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 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. Whether the claimant was kicking a hog's head or part of the tongue, he was engaged in horseplay and violated safety rules. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated May 18, 2003, 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.

saw/b