

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY D GRIGGS JR
Claimant

APPEAL NO. 11A-UI-08908-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 06/12/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's July 7, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. A hearing was initially held on July 28, 2011. After the claimant notified the Appeals Section he had not received the hearing notice, this matter was reopened and another hearing was held on August 22, 2011.

The claimant participated in the August 22 hearing. Chris Travis, the employment manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in October 2008. He was a full-time employee.

The claimant was assaulted outside of work on May 21. When he reported to work on May 23, the employer sent him home because he did not look like he was in any condition to work and he was in pain. The claimant reported to work again on May 31, 2011. He gave the employer a doctor's statement verifying he had been unable to work May 23 through 31. The employer then gave the claimant paperwork for his physician to complete that would excuse his absences for May 23 to 31, 2011. The employer also required a physician to release the claimant to work before the employer allowed him to return to work.

The employer told the claimant he had until June 9 to submit completed paperwork. The claimant explained that the physician who treated him referred him to a specialist and he did not have an appointment until June 13. The employer did not extend the time to submit the

paperwork. The claimant reasonably understood that if he did not submit the paperwork by June 9, he no longer had a job.

The specialist rescheduled the claimant's appointment to June 16 or 17. At that time, the specialist released the claimant to work. The claimant believed he could have returned to work on May 25. The claimant did not contact the employer because he believed the employer terminated him on June 9.

The claimant did not know on June 16 the employer sent him a certified letter that gave him 72 hours to submit the leave of absence paperwork the employer gave him on May 31. The certified letter was returned to the employer because the claimant moved in mid-June and did not have his mail forwarded immediately. The claimant did not contact the employer after June 9 because he had been told or understood that if he did not have the paperwork submitted by that date, he would not have a job. The employer ended the claimant's employment as of June 30 because he had not called or returned to work after May 31, 2011.

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. The facts do not establish that the claimant intended to quit. On May 31, the claimant gave the employer a doctor's statement verifying he was unable to work May 23 through 31. Although the claimant wanted to work at that time, a physician had not released him to work and the employer required a release before the claimant returned to work.

Unfortunately, the appointment the claimant had with a specialist was not scheduled until June 13. On May 31, the employer told the claimant he had to submit leave of absence paperwork by June 9. Although the claimant explained that he did not have an appointment until June 13, the employer did not extend the time to submit completed paperwork. On May 31, the claimant reasonably believed he would not have a job if he did not have paperwork completed and returned by June 9.

Since the person or persons who talked to the claimant on May 31 did not testify at the hearing, the claimant's testimony is credible. This situation could have been easily resolved if the employer told the claimant he needed to submit the paper within a couple of days of having the appointment with the specialist. Unfortunately, this did not happen. As of June 9, the claimant understood he was discharged because he did not submit the required paperwork.

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 tried to get the employer to extend the time to submit additional paperwork, but on May 31 the employer would not grant him this extension. The claimant may have used poor judgment when he did not contact someone in management or the human resource department in early June to again ask for an extension, but his failure to request for an extension for a second time does not constitute work-connected misconduct. As of June 19, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's July 7, 2011 determination (reference 01) is reversed. The employer ended the claimant's employment for reasons that do not constitute work-connected misconduct. As of June 19, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

(The claimant is held qualified as of June 19 because the specialist did not release him to work until June 16 or 17.)

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw