

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GERMAN MARTINEZ**  
Claimant

**APPEAL NO: 11A-UI-12364-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 08-21-11**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 12, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 12, 2011. The claimant participated in the hearing with Interpreter Isabelle Edwards and Attorney James Byrne. Jamie Frye, Plant Superintendent and Eloisa Baumgartner, Employment Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three and Claimant's Exhibits A through C were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time hog driver for Tyson Fresh Meats from January 17, 2000 to August 15, 2011. On August 9, 2011, the claimant reported he slipped and fell in the yard and broke his left ankle. He told the employer the injury occurred at 3:50 p.m. The employer investigated the incident August 10, 2011, because it was a work-related injury, and in reviewing the situation it watched the surveillance video of the area in which the claimant stated the injury occurred. The video showed the claimant walking normally before kicking a hog at which time he began limping severely for two steps before he could no longer walk. He was transported to the hospital where he received medical care for a broken left ankle (Claimant's Exhibits A, B and C). The employer completed an investigation form after interviewing the claimant August 11, 2011, and suspended the claimant at that time because of the discrepancies between the claimant's account of what happened and the video and because other employees reported the claimant had been "kicking the animals in an egregious manner" (Employer's Exhibit One). It then met with the claimant again August 12, 2011, and the claimant again stated he slipped and fell around 3:50 p.m. and injured his left foot (Employer's Exhibit Two). The claimant could not explain why his fall was not on the video and denied kicking the hog (Employer's Exhibit Two). The employer suspended the claimant indefinitely and instructed him to report to work August 15, 2011, for a meeting regarding his employment status (Employer's

Exhibit Two). During the August 15, 2011, meeting the employer notified the claimant it was terminating his employment for falsifying the cause of his injury and inhumane treatment of animals in kicking the hog (Employer's Exhibit Three).

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

While the claimant maintains he broke his ankle when he slipped and fell at 3:50 p.m. August 9, 2011, the video of that time period on that date viewed by the employer shows he did not slip but began limping severely, and then could not walk, after kicking a hog. The claimant asserted he accidentally misstated the time of his injury, which he testified occurred at 3:00 p.m., for at least the six days following the injury, and that is why his slip and fall did not show up on the video. He also questions whether the video was altered by the employer, although there is no evidence of the employer doing so. Even if he did incorrectly state the time of the injury, however, that does not explain why the video showed him walking normally prior to 3:50 p.m. and then limping after kicking the hog in the video. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer.

The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

**DECISION:**

The September 12, 2011, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css