

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

NOUKON DONKHONG
900 E 4TH ST TRLR A9
STORM LAKE IA 50588-2293

TYSON FRESH MEATS INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 06A-UI-01664-DWT
OC: 01/15/06 R: 01
Claimant: Respondent (2)

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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's February 2, 2006 decision (reference 01) that concluded Noukon Donkhong (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 27, 2006. The claimant participated in the hearing. Tom Baccam interpreted the hearing proceedings. Will Sager, the complex human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on September 16, 2003. The claimant worked as a full-time production worker on the kill floor. The employer's progressive disciplinary policy informs employees they will receive a written counseling when the employer notices a repeated problem. If this issue is not corrected, the employee receives a written warning. The next step is a written warning with a suspension. Another problem results in an employee's discharge after the employer suspends the employee so the employer has an opportunity to review the personnel record to make sure all steps in the disciplinary process have been taken.

On July 19, 2005, the claimant received counseling for unsatisfactory job performance – leaving too much fat in a hog carcass. On July 29, 2005, the claimant received a written warning for the same problem. On January 6, 2006, the claimant's supervisor noticed the claimant had again left too much fat in a hog carcass. The claimant's supervisor talked to the claimant about this unsatisfactory job performance.

When his supervisor talked to the claimant about leaving too much fat in a hog carcass, the claimant became upset because his co-workers performed the job in the same way and the employer did not reprimand them. The claimant was also upset with his supervisor because he believed the supervisor picked on him.

After about an hour after his supervisor talked to the claimant about his unsatisfactory work performance, the claimant marked a hog. This meant there was something wrong with the hog carcass and it was pulled off the production line. The supervisor saw the claimant do this when there nothing wrong with the hog and should not have been marked. The employer talked to the claimant about both incidents on January 6. The claimant indicated he marked the hog as a joke.

On January 11, 2006, the employer gave the claimant a written warning for both January 6 infractions. The employer suspended the claimant on January 11 for unsatisfactory job performance. Since the claimant had also marked a hog when he knew there was nothing wrong with the hog on January 6, the employer decided to use the January 11 day of suspension also to review the claimant's personnel file because this second January 6 infraction meant the claimant should be discharged in accordance with the employer's disciplinary policy. On January 12, 2006, the employer discharged the claimant for his repeated failure to perform his job satisfactorily.

The claimant established a claim for unemployment insurance benefits during the week of January 15, 2006. The claimant filed claims for the weeks ending January 21 through March 25, 2006. He received his maximum weekly benefit amount of \$349.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 employer established compelling business reasons for discharging the claimant. Based on the unsatisfactory work performance and the employer's progressive disciplinary policy, the employer was justified in discharging the claimant. Although the employer noted three times the claimant left too much fat in a hog carcass, there had been no reported problems for over five months. Unsatisfactory work performance does not necessarily mean a claimant intentionally disregards the employer's interests. Even though the employer implemented the progressive disciplinary policy, the facts do not establish that the claimant deliberately failed to do his job of pulling out fat satisfactorily.

The more troublesome infraction was the claimant's decision to mark a hog that should not have been marked. The claimant told the employer he had done this as a joke. During the hearing, the claimant indicated he had marked the hog because he was upset with his supervisor and co-workers. Even though marking the hog did not create much of a disruption in the employer's production on January 6, the fact the claimant did this either as a joke or in retaliation for receiving a reprimand for not doing his job correctly amounts to an intentional and substantial disregard of the standard of behavior the employer has right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct. As of January 15, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending January 21 through March 25, 2006. The claimant has been overpaid \$3,490.00 in unemployment insurance benefits.

DECISION:

The representative's February 2, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 15, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits for the weeks ending January 21 through March 25, 2006. The claimant has been overpaid and must repay a total of \$3,490.00 in benefits he received for these weeks.

dlw/s