

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**VICTOR M MURILLO CONTRERAS**  
Claimant

**APPEAL NO: 18A-UI-07298-TN**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 05/27/18**  
**Claimant: Appellant (3)**

Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's unemployment insurance decision dated June 28, 2018, (reference 01) which denied unemployment insurance benefits, finding that the claimant voluntarily quit work on May 31, 2018, by refusing to continue working. After due notice was provided, an in-person hearing was held in Council Bluffs, Iowa on July 20, 2018. Claimant appeared and testified. Appearing as witnesses for the claimant were Ms. Anna Moncada, claimant's domestic partner and Ms. Mayran Corea, claimant's granddaughter. Although duly notified, there were no appearances on behalf of the employer.

**ISSUE:**

The issue is whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Victor M. Murillo Contreras was employed by Tyson Fresh Meats, Inc. from August 28, 2000 until May 31, 2018, when he was discharged by the employer by refusing to sign a corrective action notice and for leaving work without authorization by walking off the job. Mr. Contreras was employed as a full-time janitorial worker and was paid by the hour. Claimant worked under the supervision of three supervisors in his work area.

On May 31, 2018, Mr. Contreras was requested by a female supervisor to assist her in cleaning a machine on one of the production lines in Mr. Contreras' work area. The claimant questioned the request stating that he was supposed to be working on the floors. The claimant inquired as to why other workers were not available to do the cleaning and the supervisor responded that other workers were not available, again instructing Mr. Contreras to assist in the machine cleaning. Mr. Contreras again stated others should be available to do the cleaning. The supervisor again stated she had no help and needed Mr. Contreras to assist.

The claimant began cleaning the machine and did so for approximately 15 minutes before he left to go to another work area for approximately 15 minutes and then went on a 15-minute break. At the conclusion of his break time, Mr. Contreras elected not to return to the area where the machine needed to be cleaned but went back to his floor cleaning in a different area, although he knew the supervisor was still cleaning the machine and waiting for him to assist her.

Because Mr. Contreras felt that his primary job was to clean floors and because he felt it was not sufficient time to work on the machine and clean floors, he brought the matter to the attention of a second supervisor in the work area, a general foreman was contacted and the general foreman agreed that Mr. Contreras should follow the recent work instructions that had been given to him and return to cleaning the production machine.

Because the claimant had not returned to assist her, the supervisor was left to clean the machine alone and she was angry at the claimant's unwillingness to follow the work directive. Mr. Contreras was told to report to the company's human resource department for a review of the matter.

The company's human resource department reviewed the matter, and concluded that Mr. Contreras should have followed the work directive that had been given to him by the supervisor and prepared a write-up for Mr. Contreras to sign. The claimant disagreed with each level of management's decision that had been made, and he continued stating that his job was only to clean the floors and that he did not have the time or additional help to perform other duties. Mr. Contreras was presented a write-up. The claimant refused to sign the write-up and walked off. As the claimant did so, a supervisor verbally warned him that his failure to sign the warning and walking off the job would jeopardize his employment. The claimant, nevertheless, left the premises before the end of the work shift without authorization. The claimant attempted to report back to work the next day, he was told that his employment with the company had ended. Mr. Contreras denies quitting his job, and maintains that he was discharged from work.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes that Mr. Contreras was separated from his employment for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In this case, the claimant strongly asserts that it was not his intention to quit his job, but that he was discharged by the employer after a series of events that took place on May 31, 2018. On that date, a female supervisor had given Mr. Contreras a work directive to assist her in cleaning a production machine in the work area. When the claimant indicated that he had other duties to do, the supervisor again directed Mr. Contreras to assist her as instructed. The claimant continued to disagree with the work directive and went to another work area to perform different tasks and then went on break. Mr. Contreras continued to refuse to assist in the machine cleaning, although at least two more levels of management had confirmed to him that he needed to follow the work directives that had been given to him in the work area by a member of management. Mr. Contreras not only continued to refuse to assist in the cleanup, he also refused to sign a warning that was being given to him by the human resource department and left the employer's premises prior to the end of the work shift without the employer's authorization, resulting in his discharge from employment. It is the claimant's position that he was concerned that if he followed the directive to assist cleaning the machine, it might be added as a regular duty for him in the future and therefore refused the directive.

Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). In order for a claimant's conduct to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's conduct was in intentional disregard of the employer's interests and reasonable standards of behavior that they have a right to expect of their employees in the provisions of the Iowa Employment Security Law. The evidence in the record establishes that Mr. Contreras did not follow work directives to assist in the cleanup of a production machine. The claimant then refused to sign a warning and left work without authorization prior to the end of the work shift. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). Failure to acknowledge written receipt of a reprimand by signing it constitutes job misconduct as a matter of law. *Greene v. IDJS*, 299

N.W.2d 651 (Iowa 1980). The refusal to accept reasonable changes in job duties constitutes job misconduct, since the employer has the right to allocate personnel in accordance with its needs and resources. *Brandl v. IDJS*, (Unpublished, Iowa App. 1986).

Although the administrative law judge is aware that Mr. Contreras did not agree with the directive to assist in cleaning the production machine, and did not agree with the decisions of the general foreman and the company's human resource department that he was obligated to follow the work directive, the claimant had been placed on notice that he was required to follow work-related directives but could challenge them later. The claimant's refusal to follow the work directives, his refusal to sign the warning, and his decision to leave work without authorization, were in willful disregard of the employer's interests and standards of behavior that the employer had a right to expect of its employees, and constitutes work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits. Accordingly, the claimant is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

**DECISION:**

The representative's unemployment insurance decision dated June 28, 2018, reference 01, is affirmed as modified. The portion of the determination disqualifying the claimant from receipt of unemployment insurance benefits is affirmed. The portion of the determination finding the claimant voluntarily quit work without good cause is modified to find the claimant was discharged for misconduct in connection with his work. Unemployment insurance benefits are withheld until the claimant is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/scn/rvs