

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BIAK T HNIN
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 17A-UI-05146-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/16/17
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 2, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit by refusing to continue working. The parties were properly notified of the hearing. A telephone hearing was held on June 2, 2017. The claimant, Biak Rualhnin Hnin, participated and was assisted by Gabriel, a Mizo-Chin interpreter. The employer, Tyson Fresh Meats, Inc., participated through Cathleena Mayes, HR Associate Administrator.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a utility operator, from November 22, 2010, until February 13, 2017, when he was discharged for walking off the line. On February 11, claimant was working on his line with several other coworkers. One of the workers stopped the machine. Claimant told him not to stop the machine, but this employee did not listen to him. Claimant then got frustrated, as he wanted to get back to work.

Claimant spoke with the employer after this happened, and the employer provided him with a Burmese interpreter. Claimant testified that he does not speak Burmese so this was not helpful for him. Claimant tried to communicate to the Burmese interpreter that he was leaving because of this issue and because he was frustrated, but he would be coming back to work. Claimant offered to bring his own interpreter, but the employer refused. When claimant reported to work on February 13, he was called into the office and told that he no longer had employment. Claimant testified that he had previously left the line because he had forgotten his badge. The employer testified that claimant was disciplined for leaving the line on November 24, 2014, and December 31, 2016. Mayes did not know if claimant received copies of the disciplinary action in

his language or if he was provided an interpreter. Claimant denies that he ever signed any prior warnings.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code § 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.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Claimant provided a largely clear and consistent account of what happened at work on February 11, 2017. The employer did not provide any firsthand witnesses, nor did it provide any written statements from firsthand witnesses or documentation in support of its decision to discharge claimant. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant more credible than the employer.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Here, the employer did not provide any credible evidence to establish that claimant had been warned for leaving the line in the past. While claimant admits that he left the line previously because he needed his badge, there is no indication he knew this was not permitted. The employer did not provide claimant with an interpreter who spoke any of his preferred languages, and it refused claimant's offer to provide his own interpreter to facilitate a conversation. The employer has not met its burden of proving that claimant was discharged for disqualifying, job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The May 2, 2017 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn