

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER P DAELSEK
Claimant

APPEAL NO: 13A-UI-06282-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 04/21/13
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 15, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant responded to the hearing notice, but was not available for the hearing. A message was left for the claimant to contact the Appeals Section immediately, but he did not contact the Appeals Section to participate in the hearing. Kristi Fox, the human resource clerk, appeared on the employer's behalf. Based on the evidence, the employer's arguments and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working as a full-time employee in September 2012. The employer's harassment and discrimination policy informs employees that the employer does not tolerate harassment, discrimination or defamatory words at work. Depending on the situation, an employee may be discharged for violating this policy just once.

Prior to April 3, 2013, the claimant's job was not in jeopardy. On April 3, the claimant was observed opening another employee's locker, P.'s locker. The claimant used a permanent locker and wrote, "You dumb SOB you left your shit unlocked so now have to read this shit every time you get your shit out. Be happy I did not take anything fag." A picture of male genitalia was also drawn.

The employer investigated the incident. The employer discharged the claimant on April 11 for violating the employer's harassment and discrimination policy.

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 law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's April 3 conduct amounts a deliberate disregard of the standard of behavior the employer has a right to expect from an employee. The claimant committed work-connected misconduct. As of April 21, 2013, the claimant is not qualified to receive benefits.

The issue of overpayment or whether the claimant must pay back any benefits he may have received since April 21, 2013, will be remanded to the Claims Section to determine.

DECISION:

The representative's May 15, 2013 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of April 21, 2013, the claimant is disqualified from receiving unemployment insurance benefits. 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.

An issue of overpayment or whether the claimant must pay back any benefits he may have received since April 21, 2013, is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css