

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL C BARNES
Claimant

APPEAL NO: 11A-UI-14513-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 10/09/11
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 1, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. The employer responded to the hearing notice, but was not available for the scheduled hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in 1993. The claimant worked full time as a quality assurance inspector. The claimant understood that under the employer's policy an employee could be discharged if they received four written warnings in a rolling calendar year.

In mid-October 2011, the claimant had recently returned to work after the employer suspended him for a third written warning. During the eight years the claimant worked as a quality assurance inspector, he had taken flexible breaks without any problems when he worked as an off-line inspector. An off-line inspector works during the scheduled breaks. Prior to October 13, the claimant took a break when he could or no break when he worked as an off-line inspector because of his job responsibilities. On October 13, the claimant worked as an off-line inspector. In an attempt to get a short break, the claimant took a five minute break 11 minutes before the scheduled break. The claimant did not take an additional ten minutes later that day as a break.

The employer gave the claimant his fourth written warning on October 14 for taking an unscheduled break on October 13. The employer discharged the claimant for October 14 for having too many warnings in a rolling calendar year.

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).

Based on the employer's policy of four written warnings in a rolling calendar year, the employer had business reasons for discharging the claimant. The evidence does not establish that the claimant committed work-connected misconduct. On October 13, the claimant took a quick break when he could because he had job duties to do as an off-line inspector during the scheduled break. He did nothing different on October 13 than what he had done before. When he took unscheduled breaks before October 13, he was not disciplined or warned that his taking an unscheduled break was not allowed. It is difficult to understand why the claimant was disciplined for taking an unscheduled break on October 13 when he had not been warned in the past eight years for doing the same thing. Based on the evidence presented during the hearing, the claimant did not commit work-connected misconduct. As of October 9, the claimant is qualified to receive benefits.

DECISION:

The representative's November 1, 2011 determination (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 9, 2011, the claimant is qualified to receive benefits. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs