

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS L BROWNE
Claimant

APPEAL NO. 06A-UI-11455-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 10/29/06 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Dennis Browne (claimant) appealed a representative's November 27, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Tyson Fresh Meats (employer) for conduct not in the best interests of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 14, 2006. The claimant participated personally. The employer participated by Kris Travis, Employment Manager. The employer offered one exhibit, which was marked for identification as Exhibit One. Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on March 21, 2006, as a full-time production laborer. The claimant signed for receipt of the company Code of Conduct. From time to time, the employer had surprise evacuation drills. Employees were instructed to leave the building and report to a post outside.

On November 1, 2006, the employer sounded the evacuation alarm. The claimant continued to work as other employees exited the building. He did not want to leave, because it was cold outside and he was wearing a short-sleeved shirt. Supervisors told the claimant to evacuate. The claimant said he was not going to exit because it was too cold. The supervisors told the claimant to evacuate. The claimant asked to get his coat. The supervisor's denied the request and told the claimant to report to his post. The claimant asked to get a frock. The supervisors denied the request and told the claimant to report to his post. The claimant headed back to work. The claimant's direct supervisor was called. The claimant told him it was too cold to go outside. The direct supervisor told the claimant that he had to go outside to practice for an emergency.

Once outside the claimant told another supervisor to shut up and get out of his face. After the evacuation, the claimant was sent home for failure to follow instructions. On November 2, 2006, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 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.

871 IAC 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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). An employer has a right to expect employees to follow instructions. The claimant disregarded the employer's right by repeatedly failing to follow the instructions of the employer and then making inappropriate comments to a supervisor. The claimant's disregard of the employer's interests is misconduct. As such, he is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's November 27, 2006 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw