

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA O LARY
Claimant

APPEAL NO. 09A-UI-08865-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 05/24/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Joshua O. Lary filed a timely appeal from a representative's decision dated June 19, 2009, reference 01, which denied benefits based upon his separation from Tyson Fresh Meats, Inc. After due notice, a telephone conference hearing was scheduled for and held on July 8, 2009. Mr. Lary participated personally. Participating as a witness was his wife, Christa Lary, a Tyson employee. The employer participated by John Cabberas and Phil Rotert.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds: The claimant was employed by Tyson Fresh Meats, Inc. from May 28, 2008 until May 26, 2009. Claimant worked as a full-time maintenance mechanic and was paid by the hour.

The claimant was discharged when the employer reasonably concluded that Mr. Lary was refusing a reasonable work-related directive that had been given to him on May 26, 2009. At that time the claimant and his wife had been instructed to watch a cooler for condensation and to perform those duties that day. The claimant initially went to the work assignment but soon returned indicating dissatisfaction with the work assignment. It appears that the claimant believed that employees with less seniority should be assigned to that work. Because the facility was experiencing a production shut down at the time, Phil Rotert, the claimant's supervisor, again instructed the claimant to follow the work directive and the claimant again disputed the work directive and indicated that he would take the matter to personnel rather than complying. The claimant was taken to the personnel department. The matter was reviewed and the claimant was discharged for failure to follow the reasonable work directive. The claimant's wife who had accompanied him followed the directive to return to work and was not discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant was discharged under disqualifying conditions.

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 evidence in the record establishes that Mr. Lary was given a reasonable work-related directive that had been issued to him in the past. On May 26, however, the claimant disputed the order that had been given to him by his supervisor. When the claimant returned and expressed an unwillingness to follow the directive he was again instructed to follow the directive as the plant was experiencing a shut down and compliance with directives was necessary. When Mr. Lary continued to object to the work assignment and did not return as directed, he was taken to the company's personnel department, the matter was reviewed and the claimant was discharged.

The administrative law judge concludes that under the circumstances the claimant's refusal to follow the reasonable and work-related directive showed a disregard for the employer's interests and standards of behavior and thus was disqualifying conduct under the provisions of the Iowa Employment Security Law.

DECISION:

The representative's decision dated June 19, 2009, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs