

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

QUAN M TRUONG
420 SKEWIS LOT B6
STORM LAKE IA 50588

TYSON FRESH MEATS INC
c/o TALX, UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05O-UI-11336-SWT
OC: 08/07/05 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 31, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 28, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Phung Nyuyen. Will Sager participated in the hearing on behalf of the employer. Official notice is taken of the distance from Storm Lake to the eastern border of California as over 1,600 miles. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

FINDINGS OF FACT:

The claimant worked as a production worker from October 3, 1995, to August 11, 2005. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled.

The claimant was sick and unable to work from July 29 through August 7, 2005. He called in properly each day and was examined by a doctor on August 5, 2005. The doctor provided the claimant with an excuse, which he turned in when he reported to work on August 9.

The claimant and his supervisor had a disagreement about the job that the claimant was assigned. There had been previous problems because the claimant wanted to work in his normal job and not the job the supervisor assigned him to do. The claimant got angry and told his supervisor that he had not really been sick when he missed work and that he had been in California because his brother had been in a car accident. This statement was not true as his brother was never in a car accident and the claimant has no family in California. The distance between Storm Lake and the eastern border of California is over 1,600 miles.

The supervisor reported that the claimant had falsified his reason for missing work. The employer discharged the claimant for that reason on August 11, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 substantial and 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I have no idea why the claimant who had a legitimate reason to miss work and a doctor's excuse to cover his absences would tell his supervisor a lie in anger. On the other hand, the employer has nothing to show that the claimant was actually in California. Considering the facts that the claimant first missed work on July 29, was examined by his doctor in Iowa on August 5, and the distance between Storm Lake and California is over 1,600 miles, it seems unlikely that the claimant made the trip.

The question is whether making up a fictitious story regarding an absence that was for legitimate reasons can constituted work-connected misconduct. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful or substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated August 31, 2005, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/s