

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN C SMITH II
Claimant

APPEAL NO. 100-UI-02420-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

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

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

On February 12, 2010 the Employment Appeal Board remanded to the Unemployment Insurance Appeals Bureau Steven C. Smith II's appeal of a fact-finding decision dated October 30, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held April 2, 2010 with Mr. Smith participating and presenting additional testimony by George Castell. Training Coordinator Terry Carmichael participated for the employer, Tyson Fresh Meats, Inc.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Steven C. Smith II was employed by Tyson Fresh Meats, Inc. from February 5, 1996 until he was discharged on or about October 2, 2009. He last worked as a maintenance supervisor, a position in which he worked a variety of shifts. He was discharged by the plant superintendent who told him that he had tardy on that day. Mr. Smith had not been tardy. The plant superintendent was not called to testify in the hearing.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence before the administrative law judge establishes that the claimant was discharged for disqualifying misconduct. It does not.

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. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). During the hearing it was painfully obvious that the employer witness knew nothing firsthand of the facts of this case. His only information came from documents provided to him by management. In response to Mr. Smith's question, Mr. Crawford testified without contradiction that for management employees the plant superintendent monitors attendance and that information is entered into company records by a clerk. In short, it is the word of the plant superintendent, who did not participate in the hearing, against the word of Mr. Smith. Mr. Smith testified plausibly and consistently under oath, subject to questioning by both the administrative law judge and by the employer's witness. The administrative law judge finds the claimant's testimony to be credible. The administrative law judge concludes that the employer has not established by a preponderance of the evidence that the final incident leading directly to the decision to discharge was an act of misconduct. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated October 30, 2009, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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