

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY JIM
Claimant

APPEAL NO. 13A-UI-07854-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 06/02/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed from a fact-finder's decision dated June 24, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on August 12, 2013. Claimant participated. The employer participated by Mr. Dzmal Jrcic, Benefit Administrator.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Jerry Jim was employed by Tyson Fresh Meats, Inc. from June 11, 2012 until April 5, 2013 when he was discharged from employment. Mr. Jim was employed as a full-time production worker and was paid by the hour.

On Wednesday, April 3, 2013, Mr. Jim was requested to assist workers on a production line by his supervisor. Mr. Jim complied but reminded his supervisor that he had a light-duty limitation that was in effect at the time. When the claimant had not been relieved by his supervisor or another worker within a reasonable period of time, the claimant went to the company's nurse's department to verify that he was not to be performing that type of work due to his light-duty limitations. Mr. Jim finished the night and returned to work the following day. On April 4, the claimant received a verbal warning from the company. When the claimant returned to work on Friday, April 5, 2013, he was discharged from employment based upon the employer's belief that the claimant had left his work assignment on April 3, 2013 without authorization.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. 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 in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter the evidence in the record establishes that the claimant was temporarily assigned to a different production job on April 3, 2013 that the claimant reasonably believed violated a light-duty limitation that had been imposed by company nurses. Near the end of the shift Mr. Jim went to the nurse department to ice his fingers and to verify that he was not to be performing the type of duties that he had recently been assigned to. Claimant followed work instructions given to him by the nurses at that time and reported to work the next day and received a verbal warning. Although nothing else occurred the claimant was discharged the following day, April 5, 2013 when he reported to work. Based upon the evidence in the record, the administrative law judge finds the claimant's conduct to be reasonable under the attendant circumstances. Claimant's conduct did not rise to the level of misconduct sufficient to warrant denial of unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated June 24, 2013, reference 01, is affirmed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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