

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN T ARO**  
Claimant

**APPEAL NO. 07A-UI-00775-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS**  
Employer

**OC: 12/17/06 R: 01  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated January 11, 2007, reference 01, which allowed benefits. After due notice was issued, a hearing was held by telephone on February 7, 2007. Although notified, the claimant did not participate. The employer participated through Michael Le Fevre.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work and whether the claimant has been overpaid unemployment insurance benefits

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Aro was employed as a production worker for Tyson fresh meats from December 21, 2000, until December 15, 2006, when he was discharged from employment. The claimant was discharged for violating a strict company rule which prohibits fighting on the job. On December 15, 2006, the claimant struck another worker during a disagreement over the placement of company products. Because Mr. Aro was determined to be the aggressor and physically struck the other worker, the claimant was discharged from employment.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes, based on the evidence in the record, that the claimant was discharged for misconduct in connection with his work. Claimant was aware of the strict rule which prohibited fighting or violence in the workplace and was aware that he could be discharged for violating the rule. Mr. Aro was discharged from employment after he struck another employee during a disagreement about the placement of company products.

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.

For the reasons stated herein, the administrative law judge finds that the claimant was discharged for misconduct in connection with his work.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid for with the claimant was not entitled. Claimant is overpaid benefits in the amount of \$2,338.00

**DECISION:**

The representative's decision dated January 11, 2007, reference 01, is hereby reversed. The claimant was discharged for misconduct in connection with his work. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions eligibility. Claimant is overpaid unemployment insurance benefits in the amount of \$2,338.00.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tpn/kjw