

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARTHUR DOCKS

Claimant

APPEAL NO: 10A-UI-09028-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 05-23-10

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 16, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 11, 2010. The claimant participated in the hearing. Kris Travis, Employment Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Tyson Fresh Meats from February 5, 2008 to May 7, 2010. He was discharged for safety violations. On November 11, 2009, the claimant received two written warnings. One was issued because he was wearing five pairs of gloves November 10, 2009, and the other was issued because he was not wearing an arm guard November 11, 2009. On April 24, 2010, the claimant received a written warning and suspension because he was walking down the aisle with his knife, a sharp straight knife used to cut fat off hams, out of his scabbard, where he is supposed to keep it anytime it is not in use, and had it tucked between his belly guard and his body, endangering himself. On May 5, 2010, the claimant was working on the line without his mesh glove on his left hand. He received a written warning and was suspended pending investigation of the incident. After reviewing the situation the employer terminated the claimant's employment for the series of safety violations.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant committed three serious safety violations in a six-month period in violation of the employer's disciplinary policy which states three written safety warnings within a rolling 12-month period will result in termination. The claimant admits that the incidents occurred but found them to be more trivial than the employer did and believes he forgot some of his safety equipment because he was experiencing the residual effects of medication he took to help with cramping in his hands. While the claimant attributes the violation to memory loss due to his medication or the beginning of Alzheimer's disease there is not enough proof of that to attribute his safety violations to those possible reasons. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The June 16, 2010, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs