

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERNST H ANDREE**

Claimant

**APPEAL NO. 08A-UI-04233-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 04/06/08 R: 03  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Ernst Andree filed an appeal from a representative's decision dated April 29, 2008, reference 01, which denied benefits based upon his separation from Tyson Fresh Meats, Inc. After due notice was issued, a hearing was held by telephone on May 14, 2008. Mr. Andree participated personally. Although duly notified, the employer declined to participate.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from December 12, 2006 until April 8, 2008 when he was discharged for theft of company property. Mr. Andree was employed as a full-time laundry worker and was paid by the hour. His immediate supervisor was Ron Schultz.

Mr. Andree was discharged after he was observed misappropriating approximately \$17.00 worth of company meat. Mr. Andree was aware of the company's purchase procedure but intentionally failed to pay for the meat and instead attempted to misappropriate it.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence established that the claimant was discharged for misconduct in connection with his work. It does. The evidence in the record establishes that Mr. Andree engaged in an intentional act of misappropriating company property in violation of policy. The evidence establishes that Mr. Andree was aware of the company's meat purchase procedures but intentionally did not follow them in an attempt to misappropriate company property. The claimant's conduct showed a willful disregard for the employer's interests and standards of behavior.

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.

For the reasons stated herein, the administrative law judge concludes the claimant was discharged for misconduct in connection with his work. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated April 29, 2008, reference 01, is hereby affirmed. The claimant was discharged for misconduct in connection with his work. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided that he is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs