

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GANDI KEZIRE**

Claimant

**APPEAL NO: 14A-UI-05341-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 04/27/14**

**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits  
871 IAC 24.10 – Employer Participation

**STATEMENT OF THE CASE:**

Tyson Fresh Meats, Inc. (employer) appealed a representative's May 15, 2014 (reference 01) decision that concluded Gandi Kezire (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known address of record, a telephone hearing was held on June 12, 2014. A review of the Appeals Bureau's conference call system indicates that the claimant failed to respond to the hearing notice and register a telephone number at which he could be reached for the hearing and did not participate in the hearing. Kristi Fox appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits, and if so, is that overpayment subject to recovery based upon whether the employer participated in the fact-finding interview?

**OUTCOME:**

Reversed. Benefits denied. Overpayment subject to recovery.

**FINDINGS OF FACT:**

The claimant started working for the employer on August 9, 2010. He worked full time as a production worker at the employer's Waterloo, Iowa pork processing facility. His last day of work was on or about April 29, 2014. The employer discharged him on that date. The stated reason for the discharge was repeated safety violations.

On or about April 23, 2014 the claimant was found not to be wearing required personal protective equipment while cleaning knives. He had previously been given a warning on September 24, 2013 for failing to wear personal protective equipment at the start of his shift, and on December 12, 2013 he had been given a suspension for another failure to be wearing personal protective equipment as required. When the additional incident occurred on April 23, the employer determined to discharge the claimant.

The claimant established a claim for unemployment insurance benefits effective April 27, 2014. A fact-finding interview was held with a Claims representative on May 14, 2014. The employer, through Shannon Wehr, Human Resources Clerk, participated directly in the fact-finding interview. The claimant received unemployment insurance benefits after the separation in the amount of \$2,448.00.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's repeated failure to wear the personal protective equipment as required, after prior warnings, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met:

(1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a,-b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

**DECISION:**

The representative's May 15, 2014 (reference 01) decision is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 29, 2014. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account is not subject to charge. The claimant is overpaid \$2,448.00, which is subject to recovery.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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