

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DERRICK H ROBERTS**

Claimant

**APPEAL NO. 13A-UI-10813-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON RETAIL DELI MEATS INC**

Employer

**OC: 04/14/13**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated September 13, 2013, reference 01, that concluded he was discharged for work-connected misconduct. Telephone hearings were held on November 5 and 20, 2013. The parties were properly notified about the hearing. The claimant participated in the hearings. Sherry West participated in the hearings on November 5 and 20 behalf of the employer. Nancy Spears participated in the hearing on behalf of the employer in the hearing on November 20. Exhibits A through H and D-1 were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a production worker from September 29, 2009, to June 13, 2013. On June 13, his supervisor had the claimant performing a job palletizing boxes for ten hours even though he had doctor's statement restricting him from performing that kind of work for extended periods. The claimant's doctor excused him from working because of a back strain from June 14 to 21. He provided the doctor's excuse to the employer. The doctor then extended the time he was excused from June 21 to July 1. The claimant also provided this excuse to the employer.

The claimant requested and was granted parental leave under the Family and Medical Leave Act (FMLA) from July 1 to July 18, 2013, due to the birth of his child.

The claimant continued to have problems with a back strain to his back. He reported to work on July 18 with a doctor's statement restricting him from pushing, pulling or carrying 25 pounds frequently, 35 occasionally, and 50 pounds maximum; lifting 25 pounds frequently, 35 occasionally, and 50 pounds maximum; and bending no more than four hours per day. The nurse prepared a job activity notification with these restrictions and told the claimant to go to his supervisor to see if there was work available. The supervisor told the claimant that the only job

available with the claimant's seniority was the palletizer job, and if the claimant was unable to do that work, he should go home.

The claimant went to his doctor on July 22. His doctor then said that the claimant had permanent restrictions of pushing, pulling or carrying 10 pounds frequently, 35 occasionally, and 50 pounds maximum; lifting 10 pounds frequently, 25 occasionally, and 50 pounds maximum; and bending no more than two hours per day and issued a medical statement containing that information.

After the doctor's appointment on July 22, the claimant called the employment manager, Matt Chase, and informed him about the medical statement. Chase informed the claimant that when he was able to return to work, he should report to work and bring in his medical excuses.

The claimant returned to the doctor on July 31 requesting a release to return to work without restrictions since the employer would not allow him to work with the restrictions he had before. The doctor informed the claimant that he could return for regular duty on August 20. The claimant told Chase about his medical release and was told to bring it in when he returned to work.

When the claimant contacted Chase around August 20 to discuss returning to work, Chase told the claimant that he was discharged.

Although the claimant was in jail on July 30, the charge against him was dismissed and the jailing had nothing to do with why the claimant was separated from employment.

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

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The evidence was conflicting to say the least, including the claimant's own statements. The doctor's statements support the claimant's testimony about going in on July 18 and being sent home due to his restrictions and his attempt on July 31 to get the restrictions lifted so he could return to work. The employer did not have the persons who actually made the decision to discharge the claimant at the hearing to rebut the testimony that the employment manager had instructed the claimant to turn in his medical statements when he had been released to return to work, which did not happen until August 20. Based on this, the employer has failed to meet its burden of providing the claimant was discharged for willful and substantial misconduct or voluntarily quit employment without good cause attributable to the employer.

**DECISION:**

The unemployment insurance decision dated September 13, 2013, reference 01, is reversed.  
The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs