

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN A FEILD

Claimant

APPEAL NO. 12A-UI-01247-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 12/04/11

Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge

Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. filed a timely appeal from a representative's decision dated January 24, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on February 28, 2012. The claimant participated. The employer participated by Mr. Jim Hook.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Steven Feild began employment with Tyson Fresh Meats on January 5, 1999. Mr. Feild most recently worked as a full-time laundry operator and was paid by the hour. His immediate supervisor was Bret Tapken. The claimant was discharged from employment effective December 20, 2011.

Mr. Feild was discharged based upon his unresponsiveness to the employer's attempts to have the claimant meet with Mr. Jim Hook on three specified dates to provide information on the company's ongoing investigation of misappropriation/theft from the company.

On December 2, 2011, Mr. Feild was placed on administrative suspension pending an investigation into theft of company property. The claimant was specifically instructed to report on the evening of December 5, 2011, to speak with investigators. Mr. Feild did not report but instead called in sick on December 5 and 6. When the claimant attempted to return to work after not meeting with human resources as instructed, he was not allowed to do so and was once again referred to a specific meeting with human resources on December 8. The claimant did not report to that meeting. Subsequently, Mr. Feild was instructed by his union representative to attend a meeting with human resources about the theft allegation and, again, did not do so.

Because of the difficulty that the company was having in meeting with Mr. Feild about the investigation into theft of company property, the company did not immediately terminate Mr. Feild. By December 19, 2011, the employer had concluded that Mr. Feild was not going to make himself available to meet with Jim Hook and the company's human resource department about the theft allegations. A decision was then made to discharge Mr. Feild from employment. The employer also considered the claimant's continued failure to report without providing notification as being consecutive days of no-call/no-show in violation of company policy.

It is Mr. Feild's position that he was "too sick" to report to the additional scheduled meeting regarding the theft allegation on December 5, 2011. It is the claimant's further position that he then reported at various times and spoke to various other individuals in the company, inquiring about his status. Mr. Feild concluded that the other individuals, who were not directly involved in the investigation, did not have any information about his ongoing employment status. Mr. Feild concluded that because other individuals that he had contacted were not able or willing to provide information to provide information on his status, he was, in effect, discharged at and for the convenience of the employer.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

In this matter, the evidence in the record establishes that Mr. Feild was initially suspended from work pending the investigation of allegations that he had been involved in the misappropriation/theft of company property. The claimant was informed that he needed to attend a meeting with the company's human resource department to meet with Mr. Jim Hook so that the claimant could provide information to the company about whether the claimant had any involvement and, if so, to what extent in misappropriations of company actor. Although the claimant was reasonably informed of the dates and times for meetings, Mr. Feild did not attend the meetings but instead called in sick or visited with a variety of other individuals who were not involved in the investigation. Because the other individuals who were not involved in the investigation could not give Mr. Feild any answers about his ongoing employment, it is his position that he was justified in not returning to work.

The administrative law judge concludes, based upon the totality of the evidence in the record, that the claimant was intentionally acting so as to make himself unavailable to meet with the company's human resource department and the specific individual who was charged with the task of investigating the allegations of theft. Based upon the number of times that Mr. Feild was instructed to meet with Mr. Hook and the human resource department by his supervisor, a night superintendent, and his union representative, the administrative law judge concludes that Mr. Feild chose not to comply with the reasonable and work-related directives that were being given to him. After the employer chose to give the claimant an extended period of time to comply and the claimant did not, the employer reached the same conclusion that Mr. Feild was non-compliant and discharged the claimant from employment. The employer also considered the claimant's repetitive failure to report or provide any notification to be an ongoing violation of the company's no-call/no-show policy. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in

the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division.

DECISION:

The representative's decision dated January 24, 2012, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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