IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JEFFREY J DEWITT
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO. 12A-UI-03659-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/05/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tyson Fresh Meats (employer) appealed a representative's March 28, 2012 decision (reference 03) that concluded Jeffrey DeWitt (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 24, 2012. The claimant participated personally. The employer participated by Dzemal Grcic, Human Resources.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 31, 2011, as a full-time laborer. The claimant signed for receipt of the employer's handbook. The employer did not issue the claimant any warnings. The employer terminated the claimant on January 24, 2012, for falsifying a company log on an unknown date by failing to record information. The claimant is unaware of doing anything wrong with regard to a company log.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 28, 2012 decision (reference 03) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs