

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS W STONE
Claimant

APPEAL NO. 08A-UI-07492-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 07/20/08 R: 02
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Nicholas Stone filed an appeal from a representative's decision dated August 14, 2008, reference 01, which denied benefits based on his separation from Tyson Fresh Meats, Inc. After due notice was issued, a hearing was held by telephone on September 3, 2008. Mr. Stone participated personally. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Stone was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Stone was employed by Tyson from May 28, 2007 until July 23, 2008. He was employed full time as a forklift operator. He was suspended from work on July 17 and notified of his discharge on July 23. Mr. Stone was discharged after he received four written warnings.

Mr. Stone received two warnings because of his involvement in accidents while operating the forklift. He also received a warning for failing to report an accident with the forklift. All accidents are to be reported immediately. On July 16, 2008, Mr. Stone was again involved in an accident with the forklift and again failed to report it. His only reason for not reporting the accident immediately was that he got busy with work. As a result of the four warnings, all received in 2008, he was discharged on July 23, 2008.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Stone was discharged as a result of four written warnings he received during a period of approximately seven months.

Two of the warnings Mr. Stone received concerned accidents while driving the forklift. The evidence failed to establish that the accidents were anything more than isolated instances of negligence. However, two of the warnings were for failing to report accidents immediately. The employer has the right to have all accidents reported immediately so that appropriate personnel can determine the extent of damage, if any, to property or persons. The employer has the right to have a record of an accident in the event an employee later claims injury as a result of the accident.

Mr. Stone had been warned in writing prior to July 16 that he had to report accidents immediately. Therefore, he was on notice that the failure to report accidents was contrary to the employer's expectations. The fact that he was busy with work was not justification for not reporting the accident of July 16. He was expected to report the accident before he resumed working. Inasmuch as he had previously been warned about not reporting accidents, the administrative law judge concludes that the failure on July 16 was a deliberate and intentional disregard of the employer's standards.

After considering all of the evidence, the administrative law judge concludes that misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated August 14, 2008, reference 01, is hereby affirmed. Mr. Stone was discharged by Tyson for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css