

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY MARTIN

Claimant

APPEAL NO: 10A-UI-07443-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 04-11-10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 19, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 12, 2010. The claimant participated in the hearing. The employer provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Tyson Fresh Meats from May 21, 2007 to April 12, 2010. On April 8, 2010, the claimant was working on his line while the worker to his left, Roland, was missing his meat as it went by because he was talking to someone from another department. The claimant was the newest hire on that line and was usually blamed for missed meat. Geraldo, the worker to the claimant's right, told Roland he was missing meat and the claimant laughed and said, "See? They busted you this time." Roland got upset and tried to blame the claimant. Roland missed more meat and Geraldo put some meat on Roland's table and Roland put it on the claimant's table. The claimant took it off his table and returned it to Roland's table. Roland then hit the claimant in the leg with a piece of meat. The claimant kicked the piece of meat to the side and continued working but Roland repeatedly kicked the meat back at the claimant, hitting him in the leg. Finally the claimant said, "Man, I keep asking you not to hit me with meat" and kicked the piece of meat farther away from both of them. He assumed the situation would end at that time. Roland then left the line and the claimant moved over to cover both his and Roland's work areas. Roland returned with another piece of meat and hit the claimant in the leg with it again. The claimant asked why he kept hitting him with meat and Roland started pushing him and then Roland hit him in the face. The claimant threw his hands up to block Roland's hands and push him away from him. He had to get past Roland to exit the area and when he tried to back up Roland came toward him. There were no

supervisors in the area at the time. Roland then grabbed the claimant's hand and pulled him down on top of him on the table to make it appear the claimant had Roland down on the table and Roland would not let go of the claimant's hand. A female employee tried to intervene and after she separated them Roland went after the claimant again. The claimant tried to push him away and gain some separation from him and was finally able to get away and go to personnel. He told personnel what happened and he was suspended pending further investigation. The employer did not interview him during its investigation but terminated his employment April 12, 2010, for fighting. Roland is still employed with the company to the claimant's knowledge. The claimant had complained to his supervisor about Roland throwing meat in the past but nothing had been done about it.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did

not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant shows he was not the instigator and acted in self-defense and his behavior does not rise to the level of disqualifying job misconduct as defined by Iowa law. The employer has not met its burden of proof. Consequently, the administrative law judge concludes the claimant's actions do not constitute disqualifying job misconduct. Therefore, benefits are allowed.

DECISION:

The May 19, 2010, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css