

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROY L BOUGHNER

Claimant

APPEAL NO: 12A-UI-15005-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 11/11/12

Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 12, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Dave Duncan, the human resource manager, and Barb Larsen appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in July 2011. The claimant worked full time as a general maintenance team member.

During his employment, the claimant received warnings for issues with his job performance. On February 2, 2012, the employer gave the claimant a documented counseling for failing to do preventative maintenance on a membrane skinner on January 28, 2012. On January 28, the membrane skinner had burnt wires when it was started. The documented counseling also addressed trash the claimant left on January 29. The claimant does not remember if he performed preventative maintenance on the membrane skinner on January 28. The claimant acknowledges that he did not clean up trash before he left work on January 29 because he had not completed the job and he planned to complete that job and clean up the trash the next day. The claimant was unable to report to work on January 30.

On August 16, the claimant received a written warning for putting the wrong size stock in the drive puller of a membrane skinner. The claimant acknowledged he put in the wrong stock key because the employer did not have the correct size. He put in the wrong size so the drive would not slip. The claimant considered this a temporary fix until the employer received the correct part.

On September 10, the claimant received a written warning and a suspension for putting a hind foot saw blade on backwards. The claimant acknowledges he put in the blade backwards because the sanitation crew came in two hours early. As a result of the sanitation crew coming in early he did not double check his work. In addition to double checking his work he also had to complete a number of tests before the sanitation crew came to work.

On October 22, the claimant received a documented counseling instead of being discharged after he installed the wrong blade in a butt skinner. The employer had recently replaced the old butt skinner with a new one. The new butt skinner did not use the same blades as the old butt skinner. The blade on the new butt skinner was broken. The claimant, without thinking, got the blade for the old butt skinner instead of the new butt skinner. He was not thinking when he installed the old blade on the new machine. The claimant understood his job was in jeopardy if he had any more performance issues.

On November 7, the claimant was in class for two hours taking his final test for Level 7. Before the claimant finished the test, he asked if he could leave to get his setup done. The instructors told him no and they would have someone help him with setup after he completed his test. By the time the claimant finished the test, he was two hours behind his normal routine. The employee assigned to help him was relatively new. The claimant hurriedly set-up equipment and took some shortcuts. After getting the machinery set up, the claimant checked on another machine issue.

The machine the claimant checked on had been run the day before with the head unlocked. After the claimant showed the employer that the service manual verified the head should run locked instead of unlocked, the claimant was asked to fix this machine. The claimant worked on the machine until he had to attend a mandatory insurance meeting. The claimant was unable to fix the machine and did not have an opportunity to double check his work.

On November 7, the employer discharged the claimant for again failing to install a saw blade correctly. The claimant installed a jones saw blade upside down, which caused down time of three to four minutes.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or

3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established justifiable business reasons for discharging the claimant. The written warnings the claimant received in September and October occurred because he was negligent. The November 7 incident could have been avoided if the claimant had not been rushed to get the setup completed. Also, the fact that the claimant was asked to see if he could fix a machine that had been run the day before with a head unlocked, prevented him from double-checking his work. Based on the facts in this case, the claimant did not intentionally disregard the employer's interests. On November 7, he did his job to best of his ability given the fact he had to start the setup two hours late and then did not have an opportunity to double check his work as he usually did. The evidence does not establish that the claimant committed work-connected misconduct. As of November 11, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's December 12, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of November 11, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/tll