

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEITH SIEMENS**

Claimant

**APPEAL NO. 10A-UI-14030-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 08/22/10**

**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Keith Siemens, filed an appeal from a decision dated September 30, 2010, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 23, 2010. The claimant participated on his own behalf.

The employer provided a telephone number and a witness name, Jim Hook, to participate in the hearing. That number was dialed at 9:11 a.m. and Rosie, who answered the phone, informed the administrative law judge Mr. Hook was too busy to participate in the hearing. The toll free number was provided and the employer was instructed to contact the Appeals Section if someone was found to participate in the hearing. By the time the record was closed at 9:37 a.m., the employer had not responded to the message and did not participate.

**ISSUE:**

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

**FINDINGS OF FACT:**

Keith Siemens was employed by Tyson from April 1, 2009 until August 31, 2010 as a full-time production employee working 4:30 p.m. until 1:00 a.m. At the end of the shift on August 21, 2010, the crew was to work overtime because the line had gotten backed up. While the line was stopped, Mr. Siemens asked his supervisor, Casey, if he could go to the restroom. She told him to pull the meat off the line or "hit the door." He did not pull the meat and was taken off the line by two other supervisors and told to take off his gear and go to the plant manager's office. In the hall, he asked again to go to the restroom and was told he could not, but he did it anyway.

In the plant manager's office, he stated the supervisor "bitched" at him but could not be precise as to what was actually discussed. He was suspended pending further investigation and after a hearing on August 28, 2010, was notified by General Manager Dan and Casey that he was fired on August 31, 2010.

## REASONING AND CONCLUSIONS OF LAW:

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 to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case, the employer has failed to provide any evidence of wrongdoing or deliberate misconduct by the claimant. The only thing established by the record is that Mr. Siemens went to the restroom prior to going to the plant manager's office even though he had been denied permission to do so.

As this is the only established incident on the night in question, the administrative law judge cannot conclude it rises to the level of substantial, job-related misconduct sufficient to warrant a denial of benefits. The employer has failed to meet its burden of proof and disqualification may not be imposed.

**DECISION:**

The representative's decision of September 30, 2010, reference 01, is reversed. Keith Siemens is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw