

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NGOR M KUANJI
Claimant

APPEAL NO. 08A-UI-03566-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 03/16/08 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 4, 2008, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on April 30, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Magdy Salama. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from February 2005 to February 26, 2008. His primary language is Arabic, and he has limited English language skills. He is unable to read English.

In January 2008, the claimant was charged with operating a vehicle while intoxicated. He was scheduled to appear in court on this charge on January 28, 2008. Due to language barriers, the claimant did not understand the notice he received and was unaware of his court date.

Later a friend who is able to read and write English informed the claimant about the missed court appearance. The claimant went to the courthouse to reschedule his court appearance, but was arrested and jailed for failing to appear in court.

The claimant tried contacting the employer personally regarding his absences, but he could not reach anyone. He had a friend contact a supervisor to notify the supervisor about his situation.

When the claimant was released from jail, he contacted his employer but was informed that his employment had been terminated. The claimant had an excellent attendance record prior to missing work in February 2008.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated April 4, 2008, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css