

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERIC F DEERING
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 21A-UI-16325-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/10/21
Claimant: Appellant (1R)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code section 96.5(11) – Incarceration Disqualification
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Eric F. Deering, filed an appeal from the July 19, 2021 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A first telephone hearing was held on September 15, 2021. The claimant participated personally. The employer, Tyson Fresh Meats Inc., participated through Lori Direnzo. The hearing was postponed to allow claimant to resubmit his proposed exhibit.

The hearing was continued to September 21, 2021. The parties waived proper notice. The hearing was held together with appeal 21A-UI-16324-JC-T. The claimant participated personally. The employer, Tyson Fresh Meats Inc., participated through Lori Direnzo.

The administrative law judge took official notice of the administrative records. Claimant Exhibit A and Department Exhibit 1 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time in production beginning August 3, 2020. Claimant last physically worked on February 24, 2021 and was separated from employment on March 22, 2021 due to job abandonment.

In 2017, claimant pled guilty to an OUI (Operating under the influence) and was placed on probation. Due to a probation violation, claimant was incarcerated from February 28, 2021

through April 28, 2021 in the Black Hawk county jail. Claimant notified his immediate supervisor prior to that he would be incarcerated and intended to return after incarceration. When claimant was released from incarceration, he learned he would have to reapply for employment after 90 days, and was rehired.

Employer stated claimant was separated due to job abandonment. Claimant did not request a personal leave of absence to cover his absence.

Claimant worked for approximately one month in July 2021 at Labor Ready. Claimant did not report all wages earned when making his weekly continued claims.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying job-related misconduct.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

“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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Code section 96.5(11)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

11. Incarceration—disqualified.

a. If the department finds that the individual became separated from employment due to the individual's incarceration in a jail, municipal holding facility, or correctional institution or facility, unless the department finds all of the following:

(1) The individual notified the employer that the individual would be absent from work due to the individual's incarceration prior to any such absence.

(2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were

dismissed, or the individual was found not guilty of all criminal charges relating to the incarceration.

(3) The individual reported back to the employer within two work days of the individual's release from incarceration and offered services.

(4) The employer rejected the individual's offer of services.

b. A disqualification under this subsection shall continue 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.

In this case, claimant separated from employment due to being incarcerated for two months. Claimant was incarcerated due to a probation violation, which stemmed from previously pleading guilty to OWI. While claimant did not notify the employer he would be incarcerated prior to, and did attempt to return, he does not meet all of the requirements above in order to be eligible for benefits under Iowa Code section 96.5(11). Accordingly, the administrative law judge concludes the claimant was discharged for disqualifying job-related misconduct, and regular state benefits are denied.

The issue of claimant's unrecorded wages with Labor Ready is remanded to the Benefits Bureau for an adjustment.

DECISION:

The unemployment insurance decision dated July 19, 2021, (reference 03) is affirmed. The claimant was discharged due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

REMAND:

The issue of claimant's unrecorded wages with Labor Ready is remanded to the Benefits Bureau for an adjustment.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
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Fax 515-478-3528

October 14, 2021
Decision Dated and Mailed

jlb/mh

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>