

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN L HARRISON**  
Claimant

**APPEAL NO: 12A-UI-06477-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 04/22/12**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

John L. Harrison (claimant) appealed a representative's May 22, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Tyson Fresh Meats, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 9, 2012. The claimant participated in the hearing. Susan Pfeiffer appeared on the employer's behalf and presented testimony from one other witness, Brett Cabiness. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits denied.

**FINDINGS OF FACT:**

The claimant started working for the employer on October 5, 2009. He worked full time as a general maintenance mechanic at the employer's Council Bluffs, Iowa facility. His last day of work was April 22, 2012. The employer discharged him on April 24, 2012. The stated reason for the discharge was falsifying daily audit log reports due to sleeping on duty.

On or about April 20 the employer received complaints from the claimant's coworkers that the claimant had been sleeping on duty on April 19 and had not done all of the audits he had reported on the daily log. The employer then pulled and viewed surveillance for April 19. It found that the claimant had reported doing four audits on the daily log during periods that the surveillance showed he was sleeping; the claimant's explanation was that he had just filled out the daily log at the end of his shift. The claimant had previously been given warnings, including a suspension, for other job performance and safety issues. As a result of the further issues which occurred on the April 19 shift, the employer discharged the claimant.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's falsification of the daily audit logs due to sleeping during the times he reported as having performed the audits shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's May 22, 2012 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 22, 2012. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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