

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT A WESTFALL
Claimant

APPEAL NO. 07A-UI-00671-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 12/10/06 R: 01
Claimant: Respondent (2)**

Section 96.5-2- a- Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's January 3, 2007 decision (reference 01) that concluded Scott A. Westfall (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 5, 2007. The claimant participated in the hearing. Kris Travis, the employment manager, appeared on the employer's behalf. 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.

ISSUES:

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

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer in August 1985. The claimant worked full time as a parts attendant.

During his employment, the employer gave the claimant warnings about the way he treated and talked to other employees. In 2004, the employer gave the claimant a written warning for engaging in a verbal confrontation that almost resulted in a physical altercation. The employer informed the claimant he had to treat everyone with respect. In late June 2006, the employer gave the claimant another written warning for violating the employer's code of conduct. Again, the claimant engaged in a verbal confrontation with another employee. This employee reported that the claimant directed inappropriate comments toward him. The employer informed the claimant the late June 2006 warning was the claimant's final written warning for failing to treat other employees with respect.

On November 9, 2006, the claimant's supervisor was not a work. The claimant was very busy. When the claimant tried to find an employee, S.C., to do some work, the employee could not be found. The claimant had some boxes for S.C. had to label. The claimant did not find any empty pallets to put the boxes on. The claimant put the boxes on a forklift so they could easily be found and would not get crushed if they were on the floor.

Later, when S.C. returned from lunch, he asked the claimant for the forklift keys. The claimant did not have any keys at that moment and told this to S.C. Later the claimant saw S.C. with a camera and heard him calling supervisors to the area. A short time later, three supervisors were in the area. One supervisor told the claimant he had been childish for putting boxes on a forklift and the boxes needed to be put on a pallet. The claimant was busy doing another job and indicated he was not going to move the boxes at that moment. The claimant indicated more than once that he was not going to move the boxes immediately. After a supervisor told the claimant that if he did not move the boxes right away he would be sent to the cafeteria, the claimant then started to move the boxes. The claimant was very upset at this point and indicated he would move the boxes, but there was no pallet to put the boxes on. The claimant knew he was upset and tried not to utter some profanity.

The three supervisors helped move the boxes to a pallet. When the claimant moved the boxes he picked up one box and moved another box by kicking it across the floor. As a result of the claimant's verbal comments and the way in which he moved the boxes, a supervisor told him to go to the cafeteria. The employer suspended the claimant that day, November 9.

On November 13, 2006, the employer discharged the claimant. The employer discharged the claimant because he again violated the employer's code of conduct by swearing at work and kicking boxes. The employer concluded the claimant again failed to act respectfully toward his co-workers and in this case three supervisors.

The claimant established a claim for unemployment insurance benefits during the week of December 10, 2006. The claimant filed claims for the weeks ending December 16, 2006, through January 27, 2007. He received his maximum weekly benefit amount of \$334.00 for each of these weeks.

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. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Since the employer has given the claimant written warnings and a final written warning in late June 2006, the claimant knew or should have known the employer would not tolerate the claimant or any other employee swearing at co-workers and especially supervisors. The claimant's November 9, 2006 conduct and statements in the presence of three supervisors amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The claimant committed work-connected misconduct.

Therefore, as of December 10, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending December 16, 2006 through January 27, 2007. The claimant has been overpaid \$2,338.00 in benefits he received for these weeks.

DECISION:

The representative's January 3, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 10, 2006. This disqualification continues until he 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. The claimant is not legally entitled to receive benefits for the weeks ending December 16, 2006, through January 27, 2007. The claimant has been overpaid and must repay a total of \$2,338.00 in benefits he received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw