

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLIE E MORRIS
Claimant

APPEAL NO: 12A-UI-09388-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 07/01/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's July 26, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Kris Rossiter, 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 concludes the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in March 2002. He worked as a full-time maintenance supervisor. The claimant knew the employer required employees to follow safety policies. The claimant understood a safety policy required employees to lock out equipment so it could not operate when an employee worked on it and that personal protective equipment, such as gloves, must be worn when working with electricity.

Several years ago the employer investigated an incident. After completing the investigation, the employer decided the claimant had not violated a safety policy. Prior to June 21, 2012, the claimant's job was not in jeopardy.

On June 21, 2012, toward the end of the claimant's shift, maintenance employees asked him to help repair equipment in the rendering department. When the claimant arrived, he got a tester and either tested or was about to test an electrical bucket, when an employee handed him some gloves or personal protective equipment. The claimant immediately realized he should have used his lock to lock out the equipment and put on gloves. The claimant handed the tester to another employee, who had locked out the equipment with his lock, and asked this employee to test the equipment. The claimant had the tester less than a minute (about 20 seconds) before an employee reminded him about needing gloves. The claimant admitted he was not thinking

and should have used his lock to lock out the bucket he was testing and should have put on gloves.

When the claimant did not use his lock to lock out an electrical bucket and did not put on gloves, he violated the employer's core safety mandate. The employer discharged the claimant on June 25 for the June 21 violation.

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. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant was the only witness who was present at the June 21 incident. The employer relied on written notes from employees who did not participate in the hearing. The claimant's testimony is given more weight than the employer's reliance on hearsay information. As a result, the claimant's version of what occurred on June 21 is reflected in the Findings of Fact.

The claimant admitted he did not think when he did not put his lock on an electrical bucket and did not put on gloves. The claimant knew another employee had locked out the electrical bucket. When the claimant either tested or was about to test the bucket when an employee reminded him that he should be wearing gloves in this situation. The claimant immediately gave the tester to another employee to use.

Even though the claimant violated the employer's core safety mandate policy, the evidence does not establish that he intentionally violated the policy. He responded to a call for assistance and without thinking tested or was about to test the electrical bucket without putting his lock on the bucket or putting on protective personal equipment, gloves. As soon as an employee started to hand him gloves, the claimant realized what he had done and asked the employee who had locked out the equipment to do the testing. This isolated incident when the evidence does not establish that the claimant intended to violate the employer's policy does not rise to the

level of work-connected misconduct. As of July 1, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's July 26, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of July 1, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css