

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EDDIE DOTSON**

Claimant

**TYSON FRESH MEATS INC**

Employer

**APPEAL NO: 13A-UI-09894-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/28/13**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 16, 2013, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 18, 2013. The claimant participated in the hearing. Teri Wray, Assistant Human Resources Manager and Terry Dotson, Employer Representative, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Tyson Fresh Meats from December 29, 2008 to July 29, 2013. The claimant's scheduled hours were 6:00 a.m. to 6:00 p.m. He enrolled in a GED class and began taking classes July 8, 2013. The employer allowed him to leave at 5:00 p.m. on Mondays and Wednesdays when the classes were held. The classes were scheduled to end August 15, 2013.

The employer requested the claimant provide documentation showing he was participating in the GED program and what hours he was required to be there. The claimant first provided a flyer about the classes and when the employer rejected that he provided a second flyer signed by the instructor with the dates and times of the classes and the phone number for Hawkeye Metro Center so the employer could check to see that he was attending. The employer rejected that as sufficient documentation. On July 11, 2013, the employer told the claimant it needed a piece of paper on the school's letterhead. On July 22, 2013, the claimant did receive the right form but the person who completed it wrote the wrong last name on it and the claimant did not notice at the time so he had to wait until the following week because they had a substitute July 24, 2013. On July 24, 2013, the claimant asked his supervisor if he could leave at 5:00 p.m. to attend his class and the supervisor denied him permission to go. The claimant would have been removed from the GED program if he missed a class so he decided to leave anyway and return with the correct documentation. The employer determined he abandoned

his job by leaving to go to school. The claimant reported for work at 6:00 a.m. July 25, 2013, but was suspended. He returned to the employer July 26, 2013, with the correct documentation but the employer terminated his employment July 29, 2013, for leaving without permission July 24, 2013. The claimant was verbally warned about tardiness on one occasion (date unknown) and received a written warning for returning late from lunch (date unknown) but the employer failed to provide those to the claimant in a timely manner and consequently both were cancelled.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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 claimant was asking to leave one hour early two days per week to better himself by getting his GED. The employer had every right to ask for some type of documentation regarding the dates and times the class met and whether the claimant had actually been attending school but did not make it clear to the claimant what type of documentation it wanted. Prior to the termination he did provide a note on the second flyer from his instructor confirming the information the claimant gave the employer but the employer would not accept that paper. He finally was able to get the school to provide what he needed July 22, 2013, but it had his last name incorrectly listed and the claimant did not notice until the employer rejected that document as well. While the claimant chose to attend class rather than finish the last hour of his shift July 24, 2013, he had no intention of abandoning or quitting his job, as evidenced by the fact he showed up for work at 6:00 a.m. the following day but was suspended. He then secured the proper documentation July 26, 2013.

The claimant had not received any warnings about his attendance in the past. The situation on July 24, 2013, was an isolated incident of possibly poor judgment by an individual caught between a rock and a hard place. He did not think he would lose his job if he left early for school that evening but knew he would be kicked out of the GED class if he was absent. Under these circumstances, the administrative law judge must conclude the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The August 16, 2013, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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