

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**AJNIZAD MUSANOVIC
1237 RAVENWOOD APT #5
WATERLOO IA 50702**

**TYSON FRESH MEATS INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-07306-DWT
OC: 06/06/04 R: 03
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's June 23, 2004 decision (reference 01) that concluded Ajnizad Musanovic (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 September 3, 2004. The claimant participated in the hearing. Zeljka Kravavic interpreted the hearing. Dave Duncan 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.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on August 10, 1999. He worked as a full-time employee on the B shift. The claimant's job was not in jeopardy prior to May 17, 2004. Prior to May 17 the claimant had not been involved in a confrontation with a supervisor or another employee.

At the end of his shift on May 17, the claimant and other workers went to get their lunchboxes before leaving work. The employer's roof leaked in the area the lunchboxes were kept and the area was wet. The employer put blue tape in the area, but did not indicate employees could not get their lunchboxes.

The claimant saw a supervisor from another department, Miller, drinking juice in the cafeteria when the claimant told him he had to get his lunchbox before he could home. Miller told the claimant to go and waved his hand in a way that the claimant understood he could get his lunchbox. Although other employees picked up their lunchboxes with no problems, when the claimant picked up his lunchbox Miller put his hand on the claimant's shoulder and pointed to the personnel office. The claimant asked Miller why he was the only employee who was told to go to personnel. The claimant was upset with Miller. The claimant's wife was present and told the claimant not to cause any trouble. They both went to the personnel office.

After seeing that an interpreter was not in the personnel office, the claimant and his wife went to the training room. An interpreter was in the training room. Miller followed the claimant to the training room. While the claimant was in the training room, he kept asking Miller why he was the only employee who had been sent to the personnel office. The claimant had his steel in his hand throughout this time and may have raised it when he was talking to Miller. Even though the claimant was upset with Miller, the claimant had no intention of hitting Miller with the steel.

The claimant's supervisor had been called to the training room and told the claimant to go home because the employer would resolve the problem the next day. The employer, however, considered the claimant suspended as of May 17 because Miller reported the claimant had threatened him. The interpreter reported that the claimant made comments in Bosnian that he was going to hit Miller and not care if the police were called. Another person who the claimant did not believe was in the area also reported that the claimant made comments in Bosnian that he was going to hit Miller. The employer did not take any statements from the claimant's wife or co-workers who were in the area at the time of the incident.

On May 19, 2004, the employer discharged the claimant. The employer discharged him based on reports from Miller, the trainer/interpreter and another employee that the claimant threatened to physically harm a supervisor and that Miller felt the claimant threatened him.

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).

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).

Based on the employer's investigation, the employer established compelling business reasons for discharging the claimant. The employer's testimony relied on hearsay information that the claimant refuted. The claimant's testimony is credible and must be given more weight than the employer's hearsay information. Therefore, a preponderance of the credible evidence establishes that while the claimant was upset with a supervisor and raised his voice at the supervisor, the claimant did not threaten the supervisor. The claimant's conduct on May 17 was the result of a single hotheaded incident, which does rise to the level of work-connected misconduct. As of June 6, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representatives' June 23, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of June 6, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b