

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

ALEX J BEVLY JR  
612 ANKENY ST  
WATERLOO IA 50703

TYSON FRESH MEATS INC  
c/o TALX UC EXPRESS  
PO BOX 293  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-04346-DWT  
OC 03/28/04 R 03  
Claimant: Appellant (2)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Alex J. Bevly, Jr. (claimant) appealed a representative's April 14, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 11, 2004. The claimant participated in the hearing with a union representative, Marcos Guzman. Dave Duncan, the complex human resource 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.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 26, 2002. He worked full time in the shipping department. Steve Young was usually his supervisor. After working 40 hours the week of March 14, the claimant agreed to voluntarily work four hours of overtime on March 20. The claimant worked the overtime to get boxes picked up and put away. He reported to work on March 20 at 2:30 p.m.

After the claimant started working on March 20, 2004, the supervisor on duty told the claimant to put boxes away and clean up an area that was some distance from the boxes. To do both jobs, the claimant had to go from one job area to another job area. The person he worked with putting away boxes did not get the additional job duty of cleaning, but he was not putting away boxes when the claimant went back to put away boxes. The supervisor on duty was not satisfied with the claimant's cleaning job performance and told the claimant he was not doing his job satisfactorily. Finally, the supervisor on duty told the claimant he would be working 12 hours of overtime to get the job done satisfactorily that he had been assigned to do. The claimant became upset and considered the supervisor on duty's comments as verbal abuse and harassment. When the claimant saw his supervisor at 6:20 p.m. he told him that he had it and would never again agree to voluntary overtime. The claimant punched out at 6:20 or 6:25 p.m.

On March 24, the employer suspended the claimant for leaving work early without authorization. After investigating the March 20 incident, the employer discharged the claimant on March 30 for leaving work early.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharged him for reasons constituting work-connected misconduct. Iowa Code §§96.5-2-a. The evidence does not establish that the claimant quit his employment. Instead, the employer initiated the employment separation by suspending and then discharging the claimant.

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).

The claimant was the only person who had personal knowledge as to what happened on March 20. Therefore, his version of what happened that day must be considered accurate. The facts show the claimant agreed to work four hours of voluntary overtime after his immediate supervisor asked him to so he could get boxes put away. The claimant had no problem with the supervisor on duty asking him to do some cleanup work also. The additional job duty became a problem only after the supervisor on duty told the claimant he was not satisfied with the way the claimant performed the cleaning assignment and told the claimant he was going to have to work 12 hours of overtime instead of four. The supervisor on duty upset the claimant and the claimant considered him to verbally abuse and harass the claimant. The claimant saw his immediate supervisor and told him he had enough and punched out no earlier than 6:20 p.m. The claimant worked 3 hours and 50 minutes instead of 4 hours. The facts do not indicate the employer had a problem with the claimant leaving work early prior to March 20, 2004. Since the claimant left work early without authorization, he did not follow the employer's rules. The employer had business reasons for discharging the claimant.

When the claimant left work he was upset and felt he had been verbally abused and harassed by the supervisor on duty. When the claimant left work early he was upset and used poor judgment. Under the facts of this case, the claimant did not commit work-connected misconduct. Therefore, as of March 28, 2004, the claimant is qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's April 14, 2004 decision (reference 01) is reversed. The claimant did not intend to quit his employment. Instead, the employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of March 28, 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/kjf