

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TERRELL FLOWERS
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO. 14A-UI-10697-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/14/14
Claimant: Respondent (1)

Iowa Code § 96.5-2-a - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed an unemployment insurance decision dated October 3, 2014, (reference 01), which held that Terrell Flowers (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 4, 2014. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Kristi Fox, Human Resources Clerk.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time production worker from March 21, 2011, through August 26, 2014, when he was discharged for having an altercation with a co-employee on August 20, 2014. The employer witness who testified in the hearing had no firsthand knowledge or any specific details regarding the altercation except for the co-employee's name of Sylvester Martin.

The claimant filed a claim for unemployment insurance benefits effective September 14, 2014, and has received benefits after the separation from employment in the amount of \$2436. No one participated in the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has

discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on September 26, 2014, for an altercation with a co-employee. When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The evidence provided by the employer in this case does not rise to the level of job misconduct as that term is defined in the above stated Administrative Rule. The employer failed to meet its burden. Work-connected misconduct has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated October 3, 2014, (reference 01), is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css