

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN C BOYD

Claimant

APPEAL NO. 07A-UI-00104-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

**OC: 11/26/06 R: 03
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (Tyson) filed an appeal from a representative's decision dated December 18, 2006, reference 01, which held that no disqualification would be imposed regarding Steven Boyd's separation from employment. After due notice was issued, a hearing was held by telephone on January 22, 2007. Mr. Boyd participated personally. The employer participated by Kris Travis, Employment Manager. Exhibits One through Five were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Boyd was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Boyd was employed by Tyson from September 2, 2003 until November 25, 2006 as a full-time maintenance mechanic. He was assigned to work the third shift from 10:00 p.m. until 7:00 a.m. He sometimes had to wait for the sanitation crew to complete their work before performing some of his duties.

On November 21, 2006, Mr. Boyd went to the office of the kill floor supervisor to check certain gauges as required by his job. Because he had to wait for the sanitation crew to finish, he sat down in the supervisor's office. He fell asleep and did not awaken until approximately 20 minutes later when two sanitation workers woke him up. Mr. Boyd did not have any history of sleeping on the job. He had not been disciplined for any matters during the course of his employment with Tyson. His sleeping on the job was the sole reason for the November 25, 2006 discharge.

REASONING AND CONCLUSIONS OF LAW:

Mr. Boyd was discharged by Tyson. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa

Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Boyd was discharged for sleeping on the job on November 21, 2006. He had not hidden himself away for the purpose of sleeping. He was sitting in full view when he fell asleep. He did not have a history of sleeping on the job. He inadvertently fell asleep while waiting for the sanitation crew to complete its wash down. Mr. Boyd had not been disciplined for any matters before November 21, 2006.

Given his clean, three-year employment record with Tyson and given the inadvertent nature of his conduct on November 21, the administrative law judge is inclined to view it as an isolated instance of negligence. Conduct so characterized is not considered disqualifying misconduct. See 871 IAC 24.32(1). While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, no disqualification is imposed.

DECISION:

The representative's decision dated December 18, 2006, reference 01, is hereby affirmed. Mr. Boyd was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css