

**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**

**JOSEPH E NORTON  
700 WEST RIDGEWAY LOT 707  
CEDAR FALLS IA 50613**

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

**Appeal Number: 04A-UI-8741-HT  
OC: 07/11/04 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, 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 is 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:

The employer, Tyson, filed an appeal from a decision dated August 4, 2004, reference 01. The decision allowed benefits to the claimant, Joseph Norton. After due notice was issued, a hearing was held by telephone conference call on September 3, 2004. The claimant participated on his own behalf. The employer participated by Personnel Manager Dave Duncan.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Joseph Norton was employed by Tyson from November 4, 2003 until July 14, 2004. He was a full-time production worker.

On July 9, 2004, Manifester Dane Howe told the claimant to move to the top line for the rest of the shift. Mr. Norton refused, indicating he had been to the nurse two days before because his arm hurt and had notified Supervisor Tim Vogel as well. Mr. Vogel had assigned him to the forklift to give his arm a rest. After his refusal, Mr. Howe took him to Mr. Vogel's office where he was told that refusing a job assignment could put his job in jeopardy and he was then sent to the cafeteria. Later, he was suspended pending investigation and then discharged on July 14, 2004, by Mr. Vogel.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant did refuse an assignment because of a problem with his arm, of which the supervisor was fully aware. Although Mr. Norton did not have any documentation from the company nurse, or a physician, excusing him from certain types of activity, the employer had earlier in the shift assigned him to operate the forklift to give his arm a rest. The administrative law judge concludes the claimant had a legitimate reason to refuse the work assignment because of the problems with his arm. There was no willful or deliberate misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of August 4, 2004, reference 01, is affirmed. Joseph Norton is qualified for benefits provided he is otherwise eligible.

bgh/kjf