

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOE P BURKE**  
Claimant

**APPEAL NO: 14A-UI-13041-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 11/16/14**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Tyson Fresh Meats, Inc. (employer) appealed a representative's December 8, 2014 (reference 01) decision that concluded Joe P. Burke (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 15, 2015. The claimant participated in the hearing. Kris Rossiter appeared on the employer's behalf and presented testimony from one other witness, Troy Smith. 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:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on November 10, 2014. He worked full time as a general mechanic in the packaging department of the employer's Columbus Junction, Iowa meat processing facility. His last day of work was November 10, 2014. The employer discharged him on that date. The reason asserted for the discharge was work performance.

On September 5, 2014 the employer had given the claimant a written warning with suspension on work performance for an incident in which the employer concluded that the claimant was responsible for failing to notify a supervisor that a system was not ready to run.

On November 8 the claimant came in for an overtime shift at about 7:15 a.m. The technical department supervisor, Smith, saw the claimant and told him to report to perform mechanical work in the rendering department. At about 9:35 a.m. he saw the claimant elsewhere and again told the claimant to go to the rendering department. Again at about 12:20 p.m. he saw the

claimant working in the cut floor shop and again told him to go to the rendering department. Smith later spoke with the manager of the rendering department and was told that the manager had not seen the claimant working in the rendering department in the morning. Smith also heard a report that while the claimant may have worked briefly in the rendering department in the afternoon, he did not return to that area after their later lunch break.

The claimant acknowledged that he did not report to the rendering department until about 8:15 a.m. He looked around in that area for where he was supposed to work, but while he did a few things, did not see many things that were for him to do. He had left the area about 9:30 a.m. and did run into Smith, who told him to return to the rendering department, which he did, again finding a few things to do but not anything substantial so he went to the cut floor shop to seek some other work to do. When directed by Smith to return again to the rendering department, he did so, and found a few things to do, but when the crew working in that area took a lunch break at approximately 1:30 p.m., he did as well. He acknowledged that he did not return to the rendering department after lunch, as his scheduled shift was over shortly thereafter and he left for the day.

### **REASONING AND CONCLUSIONS OF LAW:**

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his work performance, specifically the conclusion that the claimant had not been performing the work as assigned on November 8. The employer concluded that the claimant had not been working in the rendering department essentially the entire time. The employer relies significantly on the second-hand account from the rendering department supervisor; however, without that information being

provided first-hand, the administrative law judge is unable to ascertain whether that supervisor might have been mistaken, whether he actually observed the entire area the entire time, whether he is credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of the supervisor's report. While the claimant acknowledges leaving the department a few times, his first-hand testimony was that he was doing some work in the rendering department the majority of the time but only left to find other work to be done when he did not find other work to do in the rendering department. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant did not substantially perform the work as assigned. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute and the claimant is not disqualified from benefits.

**DECISION:**

The representative's December 8, 2014 (reference 01) decision is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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