

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SISAVAHN CHANTHAVONG
Claimant

APPEAL NO. 08A-UI-09984-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 09/07/08 R: 01
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sisavahn Chanthavong filed an appeal from a representative's decision dated October 22, 2008, reference 01, which denied benefits based on his separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on December 22, 2008. Mr. Chanthavong participated personally. Steve Baccam participated as the interpreter. The employer responded to the notice of hearing but the designated witness was not available at the number provided at the scheduled time of the hearing.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Chanthavong was employed by Tyson from 1989 until August 29, 2008. He was last employed full time as a production worker. He was discharged based on an allegation that he pushed a coworker. He did not push anyone at work. He had not been personally warned about any conduct while employed by Tyson.

REASONING AND CONCLUSIONS OF LAW:

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). The employer told Mr. Chanthavong he was being discharged for pushing another employee. The employer did not participate in the hearing to provide specific details concerning the reason for the discharge. Mere allegations of misconduct are not sufficient to result in disqualification from benefits. See 871 IAC 24.32(4).

Mr. Chanthavong denied that he had pushed or shoved anyone at work. He denied that he had ever been personally warned about any work-related matters. Inasmuch as the employer has

not presented evidence of any misconduct, no disqualification is imposed. For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated October 22, 2008, reference 01, is hereby reversed. Mr. Chanthavong was discharged but 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