

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICARDO E GONZALEZ
Claimant

APPEAL NO. 10A-UI-01730-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**Original Claim: 01/03/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Ricardo Gonzalez filed an appeal from a representative's decision dated January 22, 2010, reference 01, which denied benefits based upon his separation from Tyson Fresh Meats, Inc. After due notice was issued, a telephone conference hearing was scheduled for and held on March 16, 2010. The claimant participated personally. Although duly notified, the employer did not participate.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Mr. Gonzalez was employed by Tyson Fresh Meats from December 16, 2008, until September 4, 2009, when he was discharged from employment. Mr. Gonzalez worked as a full-time shipping worker and was paid by the hour.

Mr. Gonzalez was discharged for excessive absenteeism and tardiness. Prior to being discharged, the claimant had been warned by the company. Mr. Gonzalez was aware that his employment was in jeopardy at the time of his final attendance infraction.

The claimant's final attendance infraction took place on or about September 4, 2009, when the claimant failed to report to work because he was helping his family in transporting his mother to a doctor's appointment. Although Mr. Gonzalez was aware of the company's call-in requirements, he did not notify the employer of his impending absence.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

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.

Iowa Code section 96.5-2-b-c 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:

b. Provided further, If gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

The evidence in the record establishes that Mr. Gonzalez had been warned about his attendance and punctuality and was aware that his employment was in jeopardy. The claimant

was discharged when he was again absent on or about September 4, 2009, and failed to provide the required notice to the employer of his impending absence.

Based upon the above-stated facts and the application of the law, the administrative law judge concludes that Mr. Gonzalez was discharged under disqualifying conditions. Benefits are denied.

DECISION:

The representative's decision dated January 22, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

tpn/kjw