

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANE D COOK
Claimant

APPEAL NO. 13A-UI-01237-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 12/23/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Shane Cook (claimant) appealed a representative's January 28, 2013 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Tyson Fresh Meats (employer) for failure to follow instructions in the performance of his work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 4, 2013. The claimant was represented by Luke Guthrie, Attorney at Law, and participated personally. The employer notified the administrative law judge prior to the hearing that it did not wish to participate in the hearing.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 30, 2009, as a full-time rendering foreman supervisor. The claimant did not receive an employee handbook. The claimant signs many papers each day. He received two written warnings for forgetting to sign papers.

On December 21, 2012, the claimant arrived at work on time in the middle of a snow storm. Signs were posted telling workers there was no work for the claimant's shift. The claimant went into the plant to check in and talked to his boss, the general rendering supervisor. The general rendering supervisor told the claimant he had to stay at work even though no other worker remained except for the general rendering supervisor and a maintenance supervisor. The claimant explained that he could not stay due to the weather. There was no work for the claimant to supervisor because no employees were working. The claimant left.

On December 22, 2012, the claimant arrived at work 30 minutes early. The assistant plant manager suspended the claimant. On December 27, 2012, the employer terminated the claimant. The other employer employers who did not work on December 21, 2012, continue to

work for the employer. The claimant was told that if he had not appeared for work on December 21, 2012, he would not have been suspended or terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 28, 2013 decision (reference 02) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css