

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN M ADAMS
Claimant

APPEAL NO. 07A-UI-01226-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 12/31/06 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Ryan M. Adams (claimant) appealed a representative's January 22, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Tyson Fresh Meats, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 19, 2007. The claimant participated in the hearing. Jerome Rincken appeared on the employer's behalf. 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?

FINDINGS OF FACT:

The claimant started working for the employer on June 7, 2005. He worked full-time as a production worker in the employer's Waterloo, Iowa, pork processing facility. His last day of work was December 21, 2006. The employer suspended him that day and discharged him on December 26, 2006. The reason asserted for the discharge was leaving work when he had been directed to provide a urine sample before leaving.

The claimant worked a second shift position, beginning between 4:00 p.m. and 4:30 p.m. and usually ending by 1:00 a.m. During his shift that began the evening of December 19 and ended the morning of December 20, toward the end of the shift the claimant injured his back. There was no one available for him to see in the nurse's office at that time. He did arrive for his shift the afternoon of December 20, but was in great pain and went directly to the nurse's office. His workplace injury report was taken, and he was instructed that he needed to provide a post-accident urine sample before he left. The claimant was in sufficient pain that he could not provide a urine sample despite drinking water.

After waiting in the nurse's office for several hours in discomfort but unable to provide a sample, the claimant determined to go home and try to rest. The nurse informed him that if he left without providing a sample, he could be discharged for job abandonment. The claimant asked if there was any other way of getting the sample, such as if he went to a hospital or medical clinic,

but was told the employer would not accept this, and that he would not be sent to a doctor until he had provided the sample. As the claimant was still unable to provide a sample and was in great pain, he determined he needed to leave and did.

On December 21, the claimant sought to return back to work and indicated he would be able to provide a urine sample at that time. However, he was told that it was too late to provide a sample; he was then sent home on suspension, and subsequently discharged.

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).

Iowa Code § 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 focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer’s interest, or
 2. The employee’s duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant was his leaving without providing the urine sample despite the warning from the nurse. Refusal to comply with an employer’s instruction can be misconduct, but beyond the reasonableness of the employer’s directive the claimant’s reason for noncompliance must also be considered in determining whether it was misconduct. Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa App. 1985); Woods v. Iowa Department of Job Service, 327 N.W.2d 768 (Iowa App. 1982). Under the circumstances of this case, the claimant’s noncompliance with the employer’s instruction to provide a urine sample before leaving was in good faith and for a reasonable cause. 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 January 22, 2007 decision (reference 01) is reversed. 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css