

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FAYETTE M MARTIN
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO: 09A-UI-16313-ST

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

**OC: 09/27/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated October 16, 2009, reference 01, that held she was discharged for misconduct on September 28, 2009, and benefits are denied. A telephone hearing was held on December 7, 2009. The claimant, and her Attorney, Michael Miller, participated. Terry Carmichael, Training Coordinator, participated for the employer. Employer Exhibits One through Six was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time production worker on January 21, 2008, and last worked for the employer on September 28, 2009. The claimant received the policies of the employer that included progressive discipline. The claimant knew that accumulating fourteen points could lead to termination of employment.

The claimant was discharged on September 28 for refusing a request to submit to a random search at the guard shack while leaving the plant facility on Thursday, September 24, 2009. The claimant had been subject to a random search on the previous Wednesday. When the claimant was leaving on the 24th, a security guard requested to see her identification badge. The claimant kept walking with the remark that she had been randomly searched on Wednesday. The claimant was questioned on Friday about the incident, and suspended with a request to report on Monday pending an investigation. The claimant was discharged on Monday for violation of the search/inspection policy.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on September 28, 2009, for a serious violation of company policy.

The claimant had a minor disciplinary record unrelated to the issue of discharge. The claimant understood she was being asked for her identification, as she responded to the security guard that she had been recently searched. If the security wanted to search the claimant, a moderate warning with emphasis could have been issued to the claimant that a random search was being requested. The record as a whole does not establish job disqualifying misconduct.

DECISION:

The department decision dated October 16, 2009, reference 01, is reversed. The claimant was not discharged for misconduct on September 28, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs