

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMUEL D COOK
Claimant

APPEAL NO. 10A-UI-05952-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 03/07/10
Claimant: Appellant (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 9, 2010, reference 02, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on June 9, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a hog pusher from February 14, 2009, to July 16, 2009. He sustained an injury at work in March 2009 after he was hit in the back by some hog carcasses. Initially, the claimant was given light-duty work, but on July 16, 2009, a supervisor informed him to turn in his identification badge because the employer did not have any jobs meeting his restrictions.

The claimant had been in a half-way house on work release during the time he worked for the employer, with the employer's knowledge. After he was told that the employer did not have any work meeting his restrictions and he was put off work, the claimant's work release was revoked based on a technical violation of being out of the place of his assignment. He was placed in jail until January 2010.

After he got out of jail, he contacted the employer as he continued to have medical problems. He asked the nurse in the health services department with the employer if the employer had any light-duty jobs. The nurse said there was work available, but he could not return to work because he had been terminated on August 7, 2009. The claimant was not aware of any action taken to terminate his employment before he contacted the employer in January 2010.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code section 96.5-1 and 96.5-2-a. The agency decided that the claimant voluntarily quit his job due to his incarceration. But to voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). There is no evidence that the claimant intended to quit his job. In fact, the employer discharged the claimant while he was off work due to a work-related injury.

The issue in this case is then whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Since the employer did not participate in the hearing, the reasons why the claimant was discharged are unknown. The employer, therefore, has failed to meet its burden of proof.

The final issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The claimant testified that he was still under a doctor's care for his injury. The evidence does not, however, include any medical information about the claimant's current ability to work. This issue still needed to be resolved, and I am remanding this case to the agency for the agency to send a medical statement of ability to work to the claimant's doctor to ascertain whether he is able to work and what restrictions he has.

DECISION:

The unemployment insurance decision dated April 9, 2010, reference 02, is reversed and remanded. The claimant is qualified to receive unemployment insurance benefits based on his

separation from the employer, if he is otherwise eligible. The issue of whether the claimant is able to and available for work is remanded to the Agency to investigate and determine.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs