

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVE E SEEMAN
Claimant

APPEAL NO. 17A-UI-05048-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 05/22/16
Claimant: Respondent (1)

Iowa Code § 96.5 (2)a - Discharge

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc filed a timely appeal from a representative's decision dated May 2, 2017, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on May 31, 2017. Claimant participated. The employer participated by Ms. Catherine Mays, Human Resource Administrator.

ISSUE:

Whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: Dave Seeman was employed by Tyson Fresh Meats Inc. from March 9, 2009 until March 27, 2017 when he was discharged from employment. Mr. Seeman was employed as a full-time hog driver and was paid by the hour. His immediate Supervisor was Terry Snowball.

Mr. Seeman was discharged for an incident that had taken place on March 23, 2017. On that date the claimant inadvertently allowed an electronically controlled gate to come down sooner than expected, and struck a hog. Although the hog was not injured, the employer considered the incident to be a violation of the company's "animal well-being" rule.

During the time of the incident, the claimant was being required to perform additional duties that distracted him from the hog gate work. The claimant had not performed gate duties for the employer for an extended period and was having difficulty operating the control switch. The claimant did not intend to lower the gate while a hog remained in the area.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits, it does not.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges the worker for reasons constituting work connected misconduct. Iowa Code § 96.5 - 2-A. The employer has the burden to prove the claimant was discharged for work connected misconduct as defined by the Iowa Employment Insurance Law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The propriety of the discharge is not the issue in a contested unemployment case. An employer may be justified in discharging an employee, with the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrong doing or repeated carelessness or negligence that equals willful misconduct in culpability. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations that arise out of a workers contract of employment. Misconduct is a deliberate violation or disregard for the standard of behavior that the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interest employees duties and obligations to the employer. 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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a.

While the employer may have had justifiable business reasons for discharging claimant, based upon the evidence presented during the hearing the facts do not establish intentional disqualifying misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits.

The claimant was performing a multitude of tasks at the time and had not operated the gate control device for an extended period. Claimant inadvertently allowed a gate to drop and did not intend to do so. Although the animal was not injured, the employer made a management decision to terminate Mr. Seeman. While the employer's decision to terminate the claimant may have been a sound decision from a management viewpoint, the evidence in the record does not establish willful misconduct or that the claimant's negligence or carelessness was of such a degree or reoccurrence to manifest culpability under the provisions of the Employment Security Law. Benefits are allowed provided claimant is eligible.

DECISION:

The representative's decision dated May 2, 2017, Ref 02 is affirmed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

scn/scn