

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AARON S AGOSTO**

Claimant

**APPEAL NO. 15A-UI-03027-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 08/17/14**

**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated March 4, 2015 (reference 02) which denied unemployment insurance benefits, finding that the claimant was discharged from work under disqualifying conditions. After due notice was provided, a telephone hearing was held on April 7, 2015. Claimant participated. The employer participated by Ms. Susan Pfeifer, Human Resource Manager, and Mr. Chris Parker, Assistant Maintenance Manager.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Aaron Agosto was employed by Tyson Fresh Meats, Inc. from August 22, 2013 until February 17, 2015 when he was discharged from employment. Mr. Agosto was employed as a full-time general mechanic and was paid by the hour, his immediate supervisor was Nate Kick.

Mr. Agosto was terminated from his employment with Tyson Fresh Meats, Inc. on February 17, 2015 after a review of company security tapes verified that Mr. Agosto had left the facility for 37 minutes on Sunday, February 15, 2015. The security camera established that Mr. Agosto had left the facility without clocking out at 7:59 p.m. that day. The security camera showed that the claimant and another worker had returned at 8:37 p.m. and remained in a security entrance for approximately 2 minutes before returning into the plant. Mr. Agosto then clocked out for his 30 minute lunch break.

The possibility that Mr. Agosto had left the facility for an extended period of time had been brought to the attention of management by another worker who had been placed in a lead position and was required to inform the employer of unusual circumstances or instances where employees were not performing their duties as required.

Although company employees are allowed a 15-minute break and are not required to clock out for that break period, a decision was made to terminate Mr. Agosto and the other employee because the time taken was far in excess of the break time allotted and because the length of time involved was considered to be "time theft" by the employer.

Mr. Agosto had previously complained about the lead worker and the employer had concluded that the lead worker had merely been performing his job requirements when reporting that Mr. Agosto had job performance issues.

It is the claimant's position that his leaving the facility for the extended period of time on Sunday, February 15, 2015 was reported by the lead worker in "retaliation" because of previous issues with the lead worker. It is the claimant's further position that the company should have allowed him to "deduct" any additional time that he may have taken away from work from his pay, instead of issuing disciplinary actions or discharging him.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code Section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee, may not necessarily be serious enough to warrant a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, the claimant was discharged after the allegations by a lead worker that the claimant had left the facility for 37 minutes and then taken a half-hour lunch break, which was corroborated by the company's security tapes which verified that the claimant had done so. The claimant was aware that his break period was only 15 minutes and would not take place right before or after his authorized 30-minute lunch period. The claimant knew or should have known that leaving the premises for an extended period without authorization is contrary to the employer's interests and standards of behavior, and could jeopardize his employment with the company.

Based upon the evidence in the record, the administrative law judge concludes that the claimant's taking extended time away from work without authorization was both intentional and contrary to the employer's standards of behavior, and constituted misconduct in connection with the claimant's employment. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and he is otherwise eligible.

**DECISION:**

The representative's decision dated March 4, 2015 (reference 02) is affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and he is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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