

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHNNY A GARCIA
Claimant

APPEAL NO. 15A-UI-12591-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 09/27/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Tyson Fresh Meats (employer) appealed a representative's November 3, 2015, decision (reference 01) that concluded Johnny Garcia (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 3, 2015. The claimant participated personally. The employer participated by Kristi Fox, Human Resources Clerk. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 4, 2013, as a full-time maintenance person. The claimant did not receive a copy of the employer's handbook but a copy was available in the workplace. On February 12, 2015, the employer issued the claimant a written warning for not wearing a radio. The claimant was wearing a radio at work but the battery died during the claimant's shift. On February 15, 2015, the employer issued the claimant a written warning for recording that he completed work when he did not. The claimant notified the warning was in error and he had completed all his work. On May 7, 2015, the employer issued the claimant a written warning and suspension for failure to maintain equipment and recognize a broken safety button. The employer later determined the equipment issues occurred after the claimant performed his checks. On May 25, 2015, the employer issued the claimant a written warning for failure to make certain at least one pump was working when he locked and tagged out a pump. Later the employer discovered another employee locked and tagged out the pump.

On September 23, 2015, the claimant followed all the employer's procedures with regard to the Cryovac machine. Something happened and it broke. The claimant immediately called other employees and supervisors to the area. He stayed late and fixed the problem. The employer

thanked him for his service. On September 27, 2015, the employer terminated him for not following proper procedures on September 23, 2015.

The claimant filed for unemployment insurance benefits with an effective date of September 27, 2015. The employer did participate in the fact-finding interview on October 30, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because he was an eye witness to the events for which he was terminated.

DECISION:

The representative's November 3, 2015, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs