

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMAD A ABDELHASAN
Claimant

APPEAL NO: 10A-UI-11144-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 07/04/10
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 2, 2010 determination (reference 01) that disqualified him from receiving benefits and held the employer's account subject to charge because the claimant had been discharged for disqualifying reasons. The claimant participated at the September 27 telephone hearing. Eloise Baumgartner testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in late September 2009. The claimant worked as a full time production employee. The employer hired the claimant to work with a knife.

The claimant injured his left arm at work in January 2010. The claimant is right-handed. The claimant went to the employer's nurse and was off work for three or four days. When he returned to work he did not have any work restrictions. In February and March there were some days the claimant called in sick because his left arm hurt too much to work. The claimant had problems holding the meat with his left hand after he injured his arm.

The claimant went to a doctor. The doctor told him there was nothing the doctor could do for his arm. The claimant talked to his union representative and again was told there was nothing that could be done for him. The claimant asked his supervisor to assign him to another job, but was told no. The claimant's supervisor suggested that he work slower if his arm hurt him. The claimant did not receive any warnings for unsatisfactory work.

On April 9, the claimant asked his supervisor for a job that did not require him to use a knife. After his supervisor told him that he would not be assigned to another job, the claimant refused to do work that involved using a knife. As of April 9, the claimant did not have any work restrictions. He told the employer he had to protect his hand.

On April 13, 2010, the employer discharged the claimant because he still refused to do work that involved using a knife. The employer considered the claimant's refusal to do any work involving a knife as insubordination.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Even though the claimant injured his left arm at work, in April he did not have any work restrictions. His left arm may have hurt when he worked because he held the meat he cut with his left hand. Since the claimant was hired to do knife work, his supervisor suggested that he work slower. Although the claimant could bid for another job, he did not do this. Instead, on April 9 he refused to do any work that involved using a knife. Without a work restriction or a doctor's statement indicating he could not do knife work, the claimant's refusal to do anymore knife work amounts to an intentional and substantial disregard of the employer's interests or insubordination. The employer discharged the claimant for work-connected misconduct. Therefore, as of April 13, 2010, the claimant is not qualified to receive benefits.

DECISION:

The representative's August 2, 2010 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 13, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs