

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOMAS LOPEZ
Claimant

APPEAL NO: 15A-UI-11539-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 09/06/15
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 6, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 9, 2015. The claimant participated in the hearing with a certified interpreter from Language Link and Attorney J. Scott Edwards. Kris Rossiter, Employment Manager and Ryan Brown, Rendering General Supervisor, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time rendering operator for Tyson Fresh Meats from January 17, 1994 to September 3, 2015. He was discharged for poor work performance while he was on a final poor work performance warning.

On November 24, 2014, the claimant received a counseling statement for failing to maintain his area of responsibility after he plugged the bucket elevator up and discharged the augers in the press area resulting in a clog.

On December 3, 2014, the claimant received a written warning and suspension for letting his area of responsibility get “out of control” after he locked the south press up and failed to notify his manager because that results in “lots of hog guts spilling over” and creates extra time for cleanup.

On March 25, 2015, the claimant had been assigned to fill-in in the bone grinding room for an employee who was absent. He was assigned to work in that area because he chose to disqualify himself from the cooker-operator job he owned. Consequently he became a “no-jobber” and was required to fill-in around the plant. He had been on that assignment for two weeks. It usually takes a new operator one week to train in edible operations. A seasoned

employee like the claimant generally already knows most of the operation. The claimant received a written warning and suspension after he left his assigned work area "a mess" which resulted in a \$716.00 bill from a cleaning company to clean up the area. The cleaning company had to perform the cleanup because the area is required to be cleaned up before the next shift comes in. It took the cleaning company four hours of shoveling bone grinding before the following shift could start.

On September 1, 2015, the claimant failed to fill out and complete his log sheets which resulted in wet blood being put in the finish bin. The effect of the claimant's actions was to plug up the system creating an overflow of 40,000 pounds of contaminated blood which could not be sold. In July 2015 a ton of blood sold for \$1,800.00. At this time it is selling for \$800.00 a ton. The log sheets consist of hourly moisture and temperature checks to insure the quality of the product. All managers rely on the log sheets to check the progress and verify that the quality standards required are being met. The log sheets are supposed to be completed once every hour. On September 1, 2015, the claimant did not start any log sheets for the entire shift and did not fill out the changes made to the temperature and moisture of the finished product. The log sheets are the most important task the employer does because it tracks the quality and safety of the product for commerce.

With the September 1, 2015, incident the claimant exceeded the allowed number of disciplinary warnings allowed during a rolling one year calendar period. As a result, the employer terminated the claimant's employment September 3, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

While it is tempting to reward the claimant for his 21 years of employment with Tyson, it is exactly his vast experience that makes his transgressions more puzzling and disturbing. In the last 12 months alone the claimant received a counseling, two written warnings and two suspensions for behaviors that were for the most part easily controlled – clogging machines, failing to notify management of incidents that occurred in his area, and neglecting to complete even one entry in the hourly moisture and temperature log in his area. Despite those warnings, and the knowledge that his job was in jeopardy, the claimant failed to improve his performance.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The October 6, 2015, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs