

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**STEVEN B FULCHER**  
Claimant

**APPEAL NO. 14A-UI-11096-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 09/21/14**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Steven Fulcher (claimant) appealed an unemployment insurance decision dated October 13, 2014 (reference 01) which held that he was not eligible for unemployment insurance benefits because he was discharged from Tyson Fresh Meats, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 14, 2014. The claimant participated in the hearing. The employer participated through Kristi Fox, Human Resources Clerk.

**ISSUE:**

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

**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 employed as a full-time maintenance mechanic from May 14, 2012 through September 25, 2014 when he was discharged for violating the zero-tolerance violence policy. On September 18, 2014, at around 1:00 a.m., he was working when a team member of the clean-up crew repeatedly sprayed him with water. The claimant repeatedly tried to get the team member's attention but could not so he threw an empty white barrel at him. The team member threw the barrel back at the claimant. The claimant left the work area and went into the hallway but the team member followed him. The claimant swung at the team member's safety helmet and missed. The team member swung at the claimant and made contact. The claimant did not retaliate. He said he called the acting supervisor but no one answered because the acting supervisor had left. There were supervisors on duty but at different locations in the plant.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

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). The claimant was discharged on September 25, 2014 for violating the zero-tolerance violence policy. Although he did not make contact with the other team member, the claimant did throw a barrel at him and he did swing at the team member's safety helmet.

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The employer has an interest and duty in protecting the safety of all of its employees. The claimant's physical aggression was in violation of specific work rules and against commonly known acceptable standards of work behavior. This behavior was contrary to the best interests of the employer and the safety of its employees and is disqualifying misconduct even without a prior warning. Benefits are denied.

**DECISION:**

The unemployment insurance decision dated October 13, 2014 (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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