

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHEAL W WHITE
Claimant

APPEAL NO. 10A-UI-13206-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 08/08/10
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Micheal White filed an appeal from a representative's decision dated September 20, 2010, reference 01, which denied benefits based on his separation from Tyson Fresh Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on October 25, 2010. Mr. White participated personally. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. White was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. White was employed by Tyson from October 3, 2007 until August 7, 2010 as a full-time production worker. His last shift assignment was from 2:45 p.m. until 1:00 a.m. At approximately 11:00 p.m. on or about August 6, 2010, he was taken to human resources and told there was a complaint that he smelled of alcohol. A urinalysis conducted by the company nurse was negative for alcohol. He blew into the breathalyzer five times and it either malfunctioned or did not detect the presence of alcohol. Mr. White was sent home and told to return the following day.

Mr. White had not consumed any alcohol during his shift on August 6. He had last consumed alcohol during the early morning hours when he got off work on August 6. He had not consumed any alcohol between the time he got up at approximately 9:00 a.m. on August 6 and when he reported for work at 2:45 p.m. that day. When he returned on August 7, he was discharged. The reason he was given for the discharge was the failure to follow through on his job. His only previous discipline had been for a safety violation that occurred more than two years before his discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). It was incumbent upon the employer to provide specific details concerning the reason for discharge, as mere allegations of misconduct are not sufficient to result in disqualification from benefits. 871 IAC 24.32(4). The employer herein did not participate in the hearing to provide reasons for Mr. White's discharge.

There was no evidence that Mr. White was at work under the influence of alcohol or other drugs or that he used such items while at work. There was likewise no evidence that he failed to follow instructions in the performance of his job. Based on the employer's failure to present evidence, it is concluded that the burden of proof has not been satisfied. As such, no disqualification is imposed.

DECISION:

The representative's decision dated September 20, 2010, reference 01, is hereby reversed. Mr. White was discharged by Tyson, but misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw