

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DWIGHT A MANGUM-PORTER
Claimant

APPEAL NO. 09A-UI-03443-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON PREPARED FOODS INC
Employer

OC: 01/04/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Dwight A. Mangum-Porter filed a timely appeal from an unemployment insurance decision dated February 19, 2009, reference 04, that disqualified him for benefits. After due notice was issued, a telephone hearing was held March 26, 2009 with Mr. Mangum-Porter participating. The employer, Tyson Prepared Foods, Inc. provided the name and phone number of one witness, Ron Wood. At the time of the hearing, Mr. Wood indicated that he was too busy to participate.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Dwight A. Mangum-Porter was employed as a production worker by Tyson Prepared Foods, Inc. from February 5, 2008 until he was discharged July 9, 2008.

On the date of discharge Mr. Porter's vehicle had a blowout. Despite this he made it to work on time. He reported to his work station. Mr. Mangum-Porter was working as a floater. The person at the duty station to which he was assigned was an individual who was working half days because of an injury. He told Mr. Mangum-Porter that he had two more hours of work that day. Mr. Mangum-Porter then left to take his car keys to the guard shack so that his uncle could fix the tire while Mr. Mangum-Porter worked. Mr. Mangum-Porter and the plant safety director witnessed a traffic accident on the way out to the guard shack. They waited for law enforcement to arrive and gave their statements. In the meantime, Mr. Mangum-Porter's grandmother arrived, having been sent by his uncle. Eventually, Mr. Mangum-Porter got back to his duty station.

The lead worker, who knew that Mr. Mangum-Porter was leaving the work area, had not told the supervisor. In addition, Mr. Mangum-Porter had neglected to clock out when he left for the guard shack. He was sent home and eventually discharged because of the events of that day.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct.

Iowa Code section 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.

871 IAC 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.

The employer has the burden of proof. See Iowa Code section 96.6-2. As noted above, the employer did not participate in the hearing. The administrative law judge concludes from the evidence that Mr. Mangum-Porter was discharged because of an isolated incident of unsatisfactory performance on a day in which everything that could possibly go wrong did go wrong. The evidence does not establish a pattern of willful behavior contrary to the employer's interests. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated February 19, 2009, reference 04, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs