

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAYE FEAHN

Claimant

APPEAL NO: 11A-UI-06738-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 04/17/11

Claimant: Respondent (2-R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 10, 2011 determination (reference 01) that held claimant qualified to receive benefits and the employer's account subject to charge because he had been discharged for non disqualifying reasons. The claimant participated in the hearing. Dave Duncan, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in April 2010. He was hired to separate chits. In March 2011, the employer assigned the claimant to separate black gut. After the claimant did this job for several weeks, he went to the employer's nurse because his arm hurt. The nurse gave him some medication for his pain. The claimant understood the nurse told him he should not do be assigned to separate black gut.

On Friday, April 15, the employer had a number of employees who were not at work. As a result of being short-handed, the supervisor on duty, D., assigned the claimant to separate black gut. The claimant worked this job for the first session or 2 to 2.5 hours. When the claimant returned from a restroom break, he went to his regular work station to separate chits. The supervisor asked the claimant why he was not separating black gut. The claimant told him that he would not do that job, but instead the job he had been hired to do. The employer told the claimant a number of times that if he did not do the job he was assigned or asked to do, he was putting his job in jeopardy. The claimant indicated he understood the consequences if he refused to do the black gut job.

The employer sent the claimant home early when he refused to do the black gut job he had been assigned to do. On Monday, April 18, the employer discharged the claimant for failing to

do the job he was assigned to do. The employer's policy is to discharge employees if they refuse to do an assigned job. Prior to April 15, the claimant's job was not in jeopardy.

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 § 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).

The claimant asserted he refused to continue working at the black gut work station because his arm hurt when he had done it before. Although the claimant asserted the employer's nurse made a comment that he should not be assigned to this job, there is no evidence he received a work restriction stating he could not do this job. Without a work restriction from the employer's nurse or a doctor, a supervisor has the authority to assign the claimant to the black gut job. The claimant's refusal to continue working at that job amounts to insubordination. He intentionally disregarded the employer's interests when he would not continue working at the job the acting supervisor assigned him to do. The employer discharged the claimant for reasons constituting work-connected misconduct. As of April 17, 2011, the claimant is not qualified to receive benefits.

An issue of overpayment or whether he is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's May 10, 2011 determination (reference 01) is reversed. The employer discharged the claimant for work-connected misconduct when he refused to do the work he was assigned to do. The claimant is disqualified from receiving unemployment insurance benefits as of April 17, 2011. 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. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs