

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALEXANDER RICARDO ROJAS**  
Claimant

**APPEAL NO. 18R-UI-05476-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 02/18/18**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Tyson Fresh Meats, Inc. (employer) appealed a representative's March 9, 2018 decision (reference 01) that concluded Alexander Ricardo Rojas (claimant) was discharged and there was no evidence of willful or deliberate misconduct. Administrative Law Judge Elder issued a decision on April 16, 2018, reversing the representative's decision. A decision of remand was issued by the Employment Appeal Board on May 10, 2018. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 31, 2018. The claimant participated personally through interpreter, Ivo Riva. The employer participated by Jeaneth Ibarra, Human Resources Manager. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 hired on May 23, 2016, as a full-time production team member. The claimant did not sign for receipt of the employer's handbook. The employer posts some rules in English and Spanish on a bulletin board.

The claimant did not have any issues at work until February 2018, when a new general supervisor was hired. The new general supervisor talked to the claimant about safety issues twice and about dignity and respect once. He told human resources that he issued the claimant a written warning for safety on April 7, 2017, a counseling statement for dignity and respect on April 8, 2017, and a written warning and suspension for safety issues on October 14, 2017. The general supervisor told human resources that he gave the claimant a copy of the warnings. The claimant never saw any written warnings.

On November 11, 2017, February 6, and February 17, 2018, the general supervisor told the claimant he was taking unauthorized breaks. This was untrue. The claimant was in the

bathroom on his scheduled fifteen-minute break. The general supervisor told human resources that he gave the claimant a copy of a counseling statement or a written warning for each of those incidents. The claimant received nothing. The claimant was never warned that his behavior could result in termination. On February 21, 2018, the employer terminated the claimant for taking an unauthorized break sometime during his shift on February 17, 2018. The claimant denied ever taking an unauthorized break.

The claimant filed for unemployment insurance benefits with an effective date of February 18, 2018. The employer participated personally at the fact finding interview on March 8, 2018, by Jeaneth Ibarra.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose not to do so. The employer did not provide first-hand testimony or statements at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's March 9, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/scn