

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARVIN M LOPEZ**  
Claimant

**APPEAL NO. 11A-UI-03693-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 02/06/11  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated March 14, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 15, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Philip Lopez, and with the assistance of interpreter, Blanca Jadlow. Eloisa Baumgartner participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time as a production worker for the employer from August 5, 2002, to February 7, 2011. She was warned about taking unauthorized breaks in June, August, and October 2010.

On February 3, 2011, the claimant took a bathroom break from about 2:05 to 2:20 p.m. This was not a normal time for a break, but the claimant notified her supervisor that she needed to take a break before she took it. After she returned to her station, she continued to work until 2:54 p.m. Although the scheduled shift ending time was 3:00 p.m., the claimant left at 2:54 p.m. because she had completed all the work available.

The employer discharged the claimant on her next work day because it was believed that she had taken an unauthorized break and had punched out before work was finished for the day.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that she notified her supervisor when she took the bathroom break on February 3 and that she left work after completing her work for the day. The employer's witness presented secondhand information and was not present when the events occurred.

No current act of willful and substantial misconduct has been proven in this case. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

**DECISION:**

The unemployment insurance decision dated March 14, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/pjs