

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FRANCIS V SAGUA**

Claimant

**APPEAL NO. 07A-UI-00072-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 11/26/06 R: 02  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated December 20, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 1, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Terry Carmichael participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a production worker from January 17, 2005, to November 9, 2006. The claimant was informed and understood that under the employer's work rules, he was not to engage in irresponsible behavior that endangers others. The claimant's primary language is Arabic and he has limited English language skills.

On November 9, 2006, was trying to drive some hogs from one area to another. To speed them up, the claimant banged the prod he was carrying on a piece of metal. A supervisor told him to stop because she was concerned that he would damage the prod. The claimant replied that others had done the same thing, including supervisors. At that point, another supervisor came up and got involved in the discussion. He told the claimant that he needed to do what the supervisor said. The claimant was upset and indicated that he did not understand and did not believe he did anything wrong. The claimant uses his hands when he talks and brushed the supervisor's chest with his hand while he was speaking to him. He did not intend to hit the supervisor. The supervisor told the claimant that he needed to leave. The claimant protested but ultimately left and found the plant superintendent's office. The employer discharged the claimant for his conduct toward his supervisors.

## 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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. All the information provided by the employer was hearsay from individuals who did not participate in the hearing. The preponderance of the evidence establishes the claimant did not deliberately hit the supervisor. His obstinate behavior did not rise to the level of work-connected misconduct.

**DECISION:**

The unemployment insurance decision dated December 20, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw