

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOUNPONE NANTHASILANG
Claimant

APPEAL NO: 06A-UI-08034-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 07/02/06 R: 01
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's July 31, 2006 decision (reference 01) that concluded Bounpone Nanthasilang (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 12, 2006. The claimant participated in the hearing. Chris Chung interpreted the hearing proceedings. Lori Molan, a supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on May 4, 2004. The claimant worked full time. Molan was the claimant's supervisor. Although the employer's policy allows employees to have two knives while working, prior to June 24, employees, including the claimant, regularly used three knives without the employer saying anything. The employer usually did not enforce the two-knife rule.

On June 24, 2006, just before 11:40 p.m. and almost at the end of the claimant's shift, he observed co-workers giving Molan and a trainer one of the three knives they were using at their workstation. When the trainer asked the claimant for one of the three knives he was using, the claimant asked to keep the third knife. The claimant did not understand why suddenly the employer would not allow employees to use three knives. The claimant did not know Molan had been told on June 24 to enforce the two-knife policy.

After the claimant did not give a knife to the trainer, Molan asked him for a knife. When the claimant did not willingly give Molan one of the knives he was using, Molan became sterner and

told him he had to follow her instructions because she was his supervisor. Molan finally just took one of the claimant's knives. Molan's behavior, statements and attitude upset the claimant and made him very angry. The claimant was so upset that he beat a ham bone on a table and threw another ham bone onto a belt. The claimant raised his voice at Molan and at least one time described her in with a profane word. Molan realized the claimant was very upset with her. The claimant had not acted or behaved like this before. Molan finally called management, who came and escorted the claimant off the floor.

The claimant told management he had become very angry with Molan after she talked to him in a demeaning manner. The claimant did not like people yelling at him. On June 27, 2006, the employer discharged the claimant. The employer discharged the claimant because he had been insubordinate to his supervisor and did not handle the employer's property (ham bones) appropriately.

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. 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 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).

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).

Although Molan's actions and comments may have been reasonable, the claimant became very upset and angry when he interpreted Molan's statements and actions as demeaning and disrespectful. What occurred then was an isolated hotheaded incident. The claimant had not previously acted in this way toward Molan. While the claimant's June 24 conduct is not condoned, he clearly became very upset when Molan told him that he had to follow her instructions because she was the boss and then took one of the three knives from him. The claimant's June 24 hotheaded incident establishes that he was so angry and upset he was not thinking when he threw a hambone on a belt and raised his voice at Molan. Since the claimant did not typically behave in this way, the evidence does not establish that the claimant intentionally disregarded the standard of behavior the employer has a right to expect from an employee. Therefore, as of July 2, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 31, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons. The claimant's isolated hotheaded incident does not rise to the level of work-connected misconduct. As of July 2, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw