

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAMLAM B ARAYA
Claimant

APPEAL NO. 13R-UI-13545-H2T

**AMENDED
ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 08/12/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 4, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 25, 2012. The claimant did participate with the assistance of Tigrinya interpreter, Michael Berhane. The employer did participate through Eloisa Baumgartner, Employment Manager. Employer's Exhibit One was entered and received into the record. The case was appealed to the Employment Appeal Board who affirmed the denial of benefits on January 17, 2013. The Employment Appeal Board's decision was appealed to the Iowa District Court who issued a decision reversing the denial and awarding benefits on September 20, 2013.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a production worker full time beginning August 14, 2006 through August 14, 2012 when she was discharged. The claimant left the line early on August 8 to go to break without permission. She had previously been warned in February 2012 about taking unauthorized breaks. She had numerous write ups for safety violations during her employment as illustrated by Employer's Exhibit One. The claimant knew or should have known that her own actions were placing her job in jeopardy. The claimant was discharged pursuant to the progressive disciplinary policy as the numerous warnings she had had placed her at the termination step. The claimant was fired only because she failed to follow the policies and the rules of the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The employer's evidence does not establish sufficient misconduct to disqualify claimant from receipt of unemployment insurance benefits. Pursuant to the ruling by the Iowa District Court, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The September 4, 2012 (reference 01) decision is reversed. The claimant was discharged from employment for no job-related misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css