

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACEY L ADAMS

Claimant

APPEAL NO. 09A-UI-10095-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 05/24/09

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Stacey Adams filed an appeal from a representative's decision dated June 24, 2009, reference 01, which held him not eligible to receive unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on July 30, 2009. The claimant participated personally. Although duly notified, there was not participation by the employer.

ISSUE:

At issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and having considered the evidence in the record, finds: Stacey Adams was employed as a production worker for Tyson Fresh Meats from April 1, 2008 until May 28, 2009 when he was discharged for violating the company's attendance policies. Mr. Adams was employed on a full-time basis and his immediate supervisor was Gary Ward.

The claimant was discharged after reporting to work late on May 23, 2009 due to circumstances beyond his control. The claimant was allowed to complete the workday and allowed to complete an additional workday before being discharged. Mr. Adams had previously been warned about attendance infractions. His last attendance infraction prior to April 23, 2009 was in November 2008. Although the claimant had been given documentation that his attendance had not exceeded the company point level, the employer was unwilling to recognize the documentation and the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Adams was discharged for misconduct in connection with the employment. It does not.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct that may be serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa 1992).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past acts. The termination of employment must be based on a current act. See 871 IAC 24.32(8).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in a disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiency in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

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 claimant in this case participated personally and provided sworn testimony. In the absence of any evidence to the contrary must be held on the weight of evidence is established in the favor of Mr. Adams. The claimant testified that he had been previously warned but had not been absent or tardy from November 2008 until May 23, 2009 when he was tardy due to factors beyond his control. The claimant testified that he was allowed to work two additional days before he was discharged. Further when the claimant tried to point out that documentation showed that he had not been excessively absent he was nonetheless discharged. The administrative law judge concludes that the employer has not sustained its burden of proof in establishing disqualifying misconduct at the time of termination. Benefits are allowed.

DECISION:

The representative's decision dated June 24, 2009, reference 01, is reversed. The claimant was dismissed for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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