

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VASHNIE L PETTIGREW
Claimant

APPEAL NO. 11A-UI-02636-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 01/02/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 22, 2011, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on March 28, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Chris Travis participated in the hearing on behalf of the employer. Exhibits One through Seven were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a production worker from March 25, 2010, to December 8, 2010. She was informed and understood that under the employer's work rules, that fighting on company premises was prohibited. The claimant's husband also worked for the employer.

On the evening of December 8, 2010, the claimant and her husband went to their car after work. The car was parked in the company parking lot located on company property. While they were in their car, the claimant and her husband got into a heated argument that turned into a physical altercation. Her husband grabbed her collar and the claimant hit and scratched him. The claimant then exited the car and went to the security booth. She reported that her husband had hit her and the police were called. Her husband was arrested after she stated she wanted to file charges against him.

The claimant did not return to work right away after the night, but instead began calling in sick. When the claimant came into the plant on December 21, she provided a statement explaining what had happened in the parking lot on December 8. She was then suspended. The employer discharged the claimant on January 5, 2011, based on the fight she had with her husband on company property. The employer tried to get the claimant to come in before January 5, but the claimant continued to be unable to report to work for various reasons.

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 section 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 claimant's violation of a known work rule against fighting on company policy was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. 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 act or acts. The termination of employment must be based on a current act.

In this case, the employer had a legitimate reason for the delay in suspending and then discharging the claimant based on her absences from work.

DECISION:

The unemployment insurance decision dated February 22, 2011, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css