

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HAROLD P YOUNG
Claimant

APPEAL NO. 11A-UI-14115-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 01/16/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 17, 2011, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 21, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Barb Larsen participated in the hearing on behalf of the employer. Exhibits One through Four were admitted into evidence at the hearing.

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 October 2, 2007, to September 22, 2011. On April 21, 2011, he received a written warning for unsatisfactory work performance based on not meeting production standards for boxing ribs. On May 19, 2011, he received a one-day suspension for standing idle on the production line for about five minutes. This occurred because the claimant had just been informed that his mother had died, and he froze up on the line in reaction to this. On July 20, 2011, he was counseled for not doing his share of boxing spareribs.

On September 22, 2011, the claimant was working alone on a line bagging spareribs. Normally there would be two workers on the line. The line was operating faster than normal, and the claimant could not get a supervisor's attention to modify the speed of the line. As a result, he had difficulty keeping up with the line despite his best efforts. There is a combo box set up at the end of the line to collect meat products that are missed by the workers on the line. The claimant's supervisor believed too much meat had collected in the combo box and the claimant was not working productively.

The claimant was suspended on September 22, 2011, and discharged the next day based on his lack of production and his prior discipline for similar problems.

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 § 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).

No willful and substantial misconduct has been proven in this case. No repeated negligence equaling willful misconduct in culpability has been established. The final incident was the result of the line being understaffed and running too fast for the claimant to keep up.

DECISION:

The unemployment insurance decision dated October 17, 2011, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs