

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NABIL H MERI
Claimant

APPEAL NO. 100-UI-17062-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 07/04/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated August 18, 2010, reference 01, which denied benefits based upon the claimant's separation from Tyson Fresh Meats, Inc. A hearing was scheduled for September 28, 2010, in Des Moines, Iowa, and the claimant did not appear or participate in the hearing. An administrative law judge decision was issued on September 29, 2010, affirming the fact-finder's decision. Mr. Meri appealed to the Employment Appeal Board and on December 18, 2010, the matter was remanded for a new hearing. After due notice was issued, a telephone hearing was held on January 25, 2011. Mr. Meri participated personally. Participating as the official interpreter was Mr. Robert Talang. A potential witness for the employer, Eloisa Baumgartner, was not available at the telephone number provided.

ISSUE:

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

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Nabil Meri was employed by Tyson Fresh Meats, Inc. as a full-time production worker from March 2008 until July 8, 2010, when he was discharged from employment.

Mr. Meri was discharged based upon the employer's belief that the claimant had left his work area on July 7, 2010, without authorization. On that date, Mr. Meri was suffering from diarrhea and was required to go to the restroom facilities to relieve himself. The claimant did not have the opportunity to obtain advance permission from his supervisor and could not find his supervisor to explain why he had been absent. Although the claimant attempted to explain to his supervisor the following day, he was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the employer has sustained its burden of proof in establishing intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 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 may not necessarily be serious enough to warrant the 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 App. 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in 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 deficiencies in the party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record establishes the claimant was absent from his work assignment due to unexpected illness in the form of diarrhea. Mr. Meri attempted to find a supervisor before going to the restroom areas to relieve himself, but was unable to find his supervisor. After going to the restroom on more than one occasion due to his unexpected illness that day, the claimant was unable to find his supervisor to explain why he had been absent. When the claimant attempted to explain the following day, he was discharged from employment.

Based upon the application of the facts to the law, the administrative law judge concludes that misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated August 18, 2010, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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