

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

OSMAN ALAGIC
826 FOREST AVE
WATERLOO IA 50702-3247

TYSON FRESH MEATS INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-04597-DWT
OC: 03/19/06 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 9.5-2-a - Discharge

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's April 19, 2006 decision (reference 01) that concluded Osman Alagic (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 1, 2006. The claimant participated in the hearing. Zijo Sucasca interpreted the hearing. Jerome Rinken, a general supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 19, 2002. The claimant worked as a full-time production worker. The claimant understood the employer would discharge an employee if an employee fought with or hit another employee at work. Prior to March 20, the claimant's job was not in jeopardy.

On March 20, when it was time to rotate jobs and the claimant told an employee, who is physically larger than the claimant, the employee did not want to change jobs. The claimant then asked the supervisor to intervene so the employee would move and the claimant could do his job. The employee appeared to be in a bad mood this day. After the supervisor talked to the employee, he pushed the claimant, but the supervisor did not see this. The claimant did not do or say anything until the employee called the claimant a M.F. The claimant became very upset when he heard this comment because his mother had recently passed away. In response to the hurtful comment, the claimant pushed the employee. While the supervisor may not have seen the employee push the claimant, she saw the claimant push the employee. The supervisor immediately had the claimant go to the office.

The employer suspended the claimant on March 20. On March 22 the employer discharged the claimant for pushing another employee at work, which is a violation of the employer's code of conduct.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for discharging the claimant after he pushed another employee, which violated the employer's code of conduct. The claimant's March 20 conduct is not condoned, but in this case the other employee provoked the claimant to the point he lost his composure and pushed the employee. Prior to the March 20 incident, the claimant's job was not in jeopardy and he had not previously been involved in a situation that was similar. This isolated, hot headed incident does not rise to the level of work-connected

misconduct. As of March 19, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 19, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of March 19, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kkf