

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY I FOWLKES
Claimant

APPEAL NO. 14A-UI-04073-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 03/16/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tyson Fresh Meats (employer) appealed a representative's April 8, 2014, decision (reference 01) that concluded Anthony Fowlkes (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 6, 2014. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Kristi Fox, Human Resources Clerk, and Shannon Wehr, Human Resources Clerk.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 20, 2011, as a full-time production worker. The claimant signed for receipt of the employer's handbook on June 20, 2011. The handbook states an employee will be terminated if he accumulates ten attendance points. On July 2, 2013, the employer issued the claimant a written warning for attendance issues. The employer notified the claimant that further infractions could result in termination from employment. On July 29, 2013, the claimant received three attendance points for absenteeism. He received a total of one attendance point for his tardiness on August 12 and September 24, 2013. On September 24, 2013, the employer issued the claimant a written warning for attendance issues. The employer notified the claimant that further infractions could result in termination from employment. The claimant was sick and properly reported his absence on January 9, 2014. He received one point. The claimant was tardy on January 27, 2014, and was issued one attendance point. He received one point for each day he properly reported absence due to illness on March 2 and 5, 2014. On March 6, 2014, the claimant did not appear for work or report his absence. The claimant worked through March 18, 2014. The employer terminated the claimant on March 19, 2014.

The claimant filed for unemployment insurance benefits with an effective date of March 16, 2014. The employer is unaware of who participated in the fact-finding interview on April 4, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not

only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on March 6, 2014. The claimant was not discharged until March 19, 2014. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's April 8, 2014, decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css