

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SALVADOR GARCIA-HERNANDEZ**  
Claimant

**APPEAL NO: 14A-UI-00826-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 12/15/13**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated January 14, 2014, reference 01, that held the claimant was not discharged for misconduct on December 10, 2013, and benefits are allowed. A telephone hearing was held on March 4, 2014. The claimant, and Interpreter, Anna Pottebaum, participated. Kris Rossiter, Employment Manager, and Monty Long, Ryan Brown, Supervisors, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant was hired on September 4, 2007, and last worked for the employer as a full-time production worker in rendering on December 7, 2013. The employer posts a written notice on Friday as to the work scheduled for Saturday.

On Friday December 6 the employer posted the work schedule for December 7 with an 11:30 a.m. quit time. On Saturday, supervisor Long in the presence of supervisor Brown reminded claimant that 11:30 a.m. was quitting time.

About 10:30 a.m., supervisor Long saw claimant in the cafeteria preparing to leave. When he told claimant he needed to stay to 11:30 a.m. claimant got up and left. He had clocked-out at 10:30 a.m. before going to the cafeteria.

The employer confronted claimant on December 10 when he returned to work. The employer discharged claimant for walking off the job.

Claimant has received unemployment benefits totaling \$4,664 during an 11-week period ending March 1, 2014. The employer representative Terry Dotson participated at department fact finding.

### **REASONING AND CONCLUSIONS OF LAW:**

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 administrative law judge concludes employer has established claimant was discharged for misconduct in connection with employment on December 10, 2013 for walking off the job prior to a posted quit time.

Claimant testimony on the quit time and circumstances for leaving was not credible. He admits the employer posts on Friday the work schedule for Saturday. The posted time for December 7 was 11:30 a.m. and claimant was reminded of this in the office. He was confronted by a supervisor in the cafeteria after he had clocked-out at 10:30 a.m., but he chose to leave rather than stay. Claimant deliberately disregarded a posted work schedule notice and supervisor instruction when he left early that constitutes job disqualifying misconduct.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The administrative law judge further concludes claimant is overpaid benefits totaling \$4,664 during an eleven-week period ending March 1, 2014 due to the disqualification imposed in this decision. Since the employer participated in department fact finding the claimant is not granted relief from the overpayment.

**DECISION:**

The department decision dated January 14, 2014, reference 01, is reversed. The claimant was discharged for misconduct on December 10, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid \$4,664.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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