

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRETT C RITCHEY
Claimant

APPEAL NO. 10A-UI-06196-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**Original Claim: 11/29/09
Claimant: Respondent (2/R)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's April 8, 2010 decision (reference 04) that held the claimant qualified to receive benefits, and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. A telephone hearing was held on May 18, 2010. The claimant participated in the hearing. Kris Travis, the employment manager, 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 September 9, 2008. The claimant worked full-time as a production laborer on the kill floor. On March 12, 2010, the employer was very busy. The claimant was working in the stick pit area helping other employees pick up hogs. The claimant asked his supervisor for permission to go to the restroom. The claimant's supervisor denied this request even though the claimant was desperate.

The claimant went to the de-hair area above the stick pit area. A plant engineer observed the claimant with his pants open attempting to urinate.

The employer immediately talked to the claimant about this incident. On March 12, the claimant made a written statement informing the employer that his supervisor and Jose told him he could not do this again. The claimant did not implicate his supervisor in this incident. The claimant testified that when his supervisor would not let him go to the restroom, he told the claimant to go upstairs and urinate by the de-hair equipment.

The employer discharged the claimant for attempting to urinate on the production floor. The employer considered the claimant's action a violation of the employer's code of conduct and a violation of common decency. If inspectors had witnessed this incident instead of a plant engineer, the employer's plant could have been shut down for awhile.

The claimant reopened his claim for benefits during the week of March 14, 2010. He has filed for and received benefits since March 14, 2010.

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. 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 claimant's assertion that he did not initially report that his supervisor told him to urinate by the de-hair equipment because he did not want his supervisor to get into trouble is not credible. The claimant testified that even though he was discharged, he still did not say anything because he understood he would be eligible to receive unemployment insurance benefits. In light of the claimant's written March 12 statement, his testimony is not credible. The claimant's decision to even attempt to urinate on the production floor instead of using a restroom amounts to an intentional and substantial disregard of the standard of behavior the employer or any employer has a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct. As of March 14, 2010, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section.

DECISION:

The representative's April 8, 2010 decision (reference 04) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 14, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is Remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw